75-932

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1975

CITY OF GLENDALE,

Petitioner,

vs.

GLENDALE CITY EMPLOYEES ASSOCIATION, INC., DAVID NORTH, ROSS D. MITCHELL, E. JIM KOTONIAS, BOB MEZAK, BOB ARCHAMBEAU, AND WILLIAM J. EVANS, JR.,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF CALIFORNIA

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INTRODUCTION

Petitioner City of Glendale respectfully prays that a Writ of Certiorari issue to review the judgment and opinion of the California Supreme Court entered in this proceeding on October 3, 1975.

OPINIONS BELOW

On July 9, 1971, the Superior Court for the County of Los Angeles, State of California, filed its judgment (unreported) in Case No. 98894. That judgment granted the writ of mandate sought by the plaintiffs and ordered respondents " . . . to proceed at once to provide salary and wage increases to petitioners [plaintiffs] occupying classes of positions which shall hereinafter be set forth . . .".

Defendants [petitioners here] then appealed to the Court of Appeal, Second Appellate District. On November 28, 1973, the Court of Appeal filed its opinion in 2d Civ. No. 40012 reversing the judgment of the Superior Court. The opinion is unreported. After a rehearing, a second opinion was filed on May 21, 1974, in 2d Civ. No. 40012. The opinion is unreported. This second opinion reaffirmed its earlier reversal.

The California Supreme Court granted a hearing, and on October 3, 1975, filed its opinion (reported at 15 Cal.3d 328, ___ Cal. Rptr. ___, ___ P.2d ___) (set forth in Appendix B). That decision reversed the ruling of the Court of Appeal and directed that the judgment be remanded to the Superior Court ". . . to permit joinder of the appropriate city officials." This was presumably

to enable the Court to order these officials to pay the judgment.

A petition for rehearing in the California Supreme Court was timely filed on October 17, 1975. It was denied on October 30, 1975.

JURISDICTION

The judgment, printed in Appendix B hereto, which is sought to be reviewed is dated October 3, 1975, and was filed on that date.

A rehearing by the California Supreme Court was denied on October 30, 1975.

The jurisdiction of this Court is invoked under 28 USC §1257(3)(1970).

QUESTIONS PRESENTED

The judgment of the trial court gives rise to the following questions:

A. Did the State Court deny to petitioner due process of law in granting a writ of

mandate ordering the computation and payment of salaries to City employees, notwithstanding the present existence of a salary ordinance as required by the City Charter and which authorized payment of a different amount for salaries?

B. Did the Court below deny due process of law to petitioner by construing the Memorandum of Understanding to be a binding contract which fixed the compensation for City employees? If found to be a contract, does the failure to comply with City Charter and State law provisions regulating such contracts preclude the granting of the relief sought?

C. Was it a violation of due process and the doctrine of separation of powers for the Court to compel the payment of employee salaries contrary to the provisions of an existing salary ordinance and notwithstanding the total absence of any other corresponding salary ordinance or appropriation authorizing such payments? By substituting its own discretion and interpretation for that of the legislative body, did the Court encroach unconstitutionally upon the powers of a coexisting and coequal branch of the government?

D. Was it a violation of due process and separation of powers for the Court to interpret the Memorandum of Understanding to be a binding contract wherein the Council delegated its discretionary function to determine employee salaries, and that all subsequent acts were ministerial? Would there be a different result

than that of the Court below even under California contract law?

E. Did the Court below deny Federal and State due process guarantees to the City of Glendale by failing to recognize applicable State and local laws which were in accord and which were not declared constitutionally invalid?

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The following constitutional provisions, statutes and ordinances are involved (set forth in Appendix A):

U.S. Constitution:

Article I, Section 1; Article III, Section 1; Amendment V; Amendment XIV, Section 1.

California Constitution:

Article I, Sections 1 and 15; Article III, Section 3; Article XI, Sections 3(a) and 5(a); Article XVI, Section 18.

California Statutes:

Civil Code: Sections 1644, 1646 and 1647.

Government Code: Section 3500.

Glendale City Charter:

Article IV, Section 3; Article VI Section 6; Article XI, Sections 1, 3 and 4; Article XXIII, Sections 13 and 27.

Glendale Ordinances:

Ordinance No. 3936, amending Ordinance No. 3921; Ordinance No. 3921.

STATEMENT OF THE CASE

Pursuant to the Meyers-Milias-Brown Act (California Government Code, Sections 3500, et seq.) the City of Glendale enacted certain ordinances governing employer-employee relations. The Glendale City Employees' Association (hereinafter referred to as "the Association") representing the City employees, and represented by its President, David North, and a negotiator from the California League of City Employee's Association, Phillip Bowers, met and conferred with Charles Briley, the Assistant City Manager, with regard to the salaries to be paid to the City employees for the fiscal year 1970-1971. The result of these meetings was a negotiated Memorandum of Understanding concerning salaries and other matters.

The Memorandum of Understanding contained four provisions, but the one upon which

this action is based deals with a salary survey. It states as follows:

> "The parties hereto will conduct a joint salary survey and using as guidelines data secured from the following jurisdictions, Burbank, Pasadena, Santa Monica, Long Beach, Anaheim, Santa Ana, Los Angeles City and Los Angeles County. The intent of the survey will be to place Glendale salaries in an above average position with reference to the jurisdictions compared with proper consideration given to internal alignments and traditional relationships. The data used will be that data available to us and intended for use in fiscal year 1970-71. Adjustments which it is agreed shall be made will have an effective date of October 1, 1970. It is intended that comparisons will be made on a classification basis and not title only, and that the classifications shall be determined by professional judgment of the highest qualified personnel people with whom we would confer in the jurisdictions with whom which we will compare."

Pursuant to this agreement, a salary survey was conducted. Consistent with its practices since 1953, the City utilized the data by preparing "bar charts." These charts are

long strips of graph paper showing the job classification on the left side and the salary range for that classification as represented by a colored line on the chart. Each jurisdiction surveyed was represented by a different colored line. By comparing the lineup of the different colored lines it was possible to easily visualize the relationship of Glendale salaries to the other jurisdictions surveyed. It was agreed that in making these comparisons the City could be particularly concerned with the top step (fifth or E step) of the salary ranges, since the majority of the Glendale employees were at the top step of their salary range.

Some classifications had no comparable position in their jurisdictions and no comparison was possible. In other cases comparable positions were found in only one or a few of the jurisdictions. Data intended for use in 1970-71 in Santa Monica and Anaheim were not available at all.

The charts were completed in mid-September of 1970 so that the City representatives could make recommendations for salary adjustments in time for them to be effective as of October 1, 1970. The proposed Glendale salaries were indicated by a brown line on the bar charts and were discussed by representatives of both parties. The Association then obtained a computer analysis of the arithmetical averages of the salaries surveyed, and took the position that the City had not complied with the memorandum of understanding. A salary

ordinance embodying the recommendations of the City Manager's office was enacted over objections from the Association. (Ordinance No. 3936, amending Ordinance No. 3921.)

The Association sought a writ of mandate from the trial court contending that the memorandum of understanding had contemplated an arithmetical average and that the memorandum bound the City to pay each class of employees a salary at least in a salary range above the average of the surveyed jurisdictions for the comparable class of position.

TRIAL COURT ACTION

The City defended the action on numerous grounds, among them that the memorandum of understanding was not binding upon the City Council and that mandate was inappropriate to compel action by the City Council, but also on the merits that, properly interpreted, the memorandum of understanding was fully complied with. The trial court received testimony concerning certain negotiations leading up to the memorandum of understanding and as to the meaning of the phrases "above-average position" and "with proper consideration given to internal alignments and traditional relationships," in the memorandum.

After the trial, the Court concluded that the average for each of the classes of positions must be recomputed using the arithmetical average of the jurisdictions considered plus one cent, and the trial court entered its judgment directing that a peremptory writ of mandate issue. Judgment was filed on July 9, 1971. The defendants appealed.

COURT OF APPEAL

The Court of Appeal reversed the judgment of the trial court. The Court found that the City Council could not be compelled by writ of mandate to adopt an ordinance based on the terms contained in the Memorandum of Understanding as construed by the trial court. The decision was filed on November 28, 1973. Thereafter, the Association successfully sought a rehearing in the Court of Appeal.

The Court of Appeal filed its second opinion on May 21, 1974. This opinion reaffirmed its reversal of the trial court's judgment.

A second petition for rehearing was denied on June 19, 1974. Plaintiffs then filed a petition for hearing in the California Supreme Court, which was granted on August 28, 1974.

CALIFORNIA SUPREME COURT

In its opinion, filed on October 3, 1975 (reported at 15 Cal.3d 328, ___ Cal.Rptr. ___, ___ P.2d ___), the California Supreme Court discussed the same legal issues raised in the petition for hearing in the Court of Appeal.

The Supreme Court's opinion reversed the judgment of the Court of Appeal. Among its findings, it concluded that the Memorandum became a binding contract upon approval by the City Council; that the City had failed to comply with the terms of the contract, as interpreted by the trial court; that even though the plaintiffs filed suit on behalf of the class of City employees, it found those allegations to be superfluous; that the administrative remedy was inadequate, and so plaintiffs' failure to exhaust its admininstrative remedies was excused; and that the approval of the Memorandum of Understanding itself constituted the legislative act that fixed employee salaries in accord with the understanding. In order to mend what it considered to be a "procedural defect," the Court remanded the judgment back to the trial court for joinder of the "appropriate city officials" entrusted with the administrative duties of computing and paying salaries.

Defendants filed a timely petition for rehearing in the California Supreme Court on October 17, 1975. The petition was denied on October 30, 1975.

REASONS FOR ALLOWANCE OF THE WRIT

A. UNDER THE U.S. CONSTITUTION (AMENDMENT V; AMENDMENT XIV, SECTION 1) AND THE CALIFORNIA CONSTITUTION (ARTICLE I, SECTIONS 1, 15) THE STATE COURT DENIED TO PETITIONER DUE PROCESS OF LAW IN GRANTING A WRIT OF MANDATE ORDERING THE COMPUTATION AND PAYMENT OF SALARIES TO CITY EMPLOYEES, NOTWITHSTANDING THE EXISTENCE OF A SALARY ORDINANCE AS REQUIRED BY THE CITY CHARTER AND WHICH AUTHORIZED PAYMENT OF A DIFFERENT AMOUNT FOR SALARIES.

It is no longer the subject of reasonable debate that mandamus may not be employed to effect a desired decision contrary to the opinion of an official or board vested with discretionary power. Redding v. City of Los Angeles (1947) 81 Cal.App.2d 888, 185 P.2d 430, certiorari denied 68 S.Ct. 1338, 334 U.S. 825, 92 L.Ed. 1754, rehearing denied 68 S.Ct. 1511, 334 U.S. 854, 92 L.Ed. 1776; Rupp v. Teets (1957) 48

Cal.2d 647, 312 P.2d 5, certiorari granted 78 S.Ct. 91, 355 U.S. 854, 2 L.Ed. 2d 62, affirmed 78 S.Ct. 1263, 357 U.S. 549, 2 L.Ed. 2d 1531, rehearing denied 79 S.Ct. 13, 358 U.S. 858, 3 L.Ed.2d 92; Bell v. Hood (D.C. 1947) 71 F.Supp. 813; Martin v. County of Contra Costa (1970) 8 Cal.App.3d 856, 87 Cal. Rptr. 886; Johanson v. City Council of City of Santa Cruz (1963) 222 Cal.App.2d 68 at 71-72, 34 Cal.Rptr. 798; Tandy v. City of Oakland (1962) 208 Cal.App.2d 609, 611, 25 Cal.Rptr. 429.

Ostensibly, the California Supreme Court ordered the "ministerial" act of paying employee salaries. Where City officials refuse to pay salaries as legally required by a salary ordinance then in existence, such an order would indeed be compelling a ministerial act. However, the Court simply ignored the existence already of a valid salary ordinance, proclaiming the approval by the City Council of the Memorandum of Understanding to be a sufficient "legislative act" that fixed employee salaries.

But not just any legislative act is enough to fix employee salaries. Article IV, Section 3 of the City Charter of Glendale states:

> "All [other] officers, assistants, deputies clerks and employees shall receive such compensation as the council may from time to time determine by ordinance." (Emphasis added.)

Section 4 of Article XI states in part:

"All demands approved by the proper board, commission or officer shall be presented to the city controller, who shall examine the same; and if the amount thereof is legally due and there remains on his books an unexhausted balance or an appropriation against which the same may be charged, he shall approve such demand . . ." (Emphasis added.)

Section 3 of Article XI states in part:

"All demands against the city shall, before being paid, be presented to and approved by the proper commission or officer, as herein provided. Demands for which no appropriation has been made shall be presented to the council . . ." (Emphasis added.)

The provisions of the Charter are the law of the State and have the force and effect of legislative enactments (California Constitution, Article XI, Section 3(a)). It is therefore clear that State law, as well as the Charter, requires that employee salaries be fixed by ordinance accompanied by all the formalities and safeguards pertinent thereto. (See City Charter, Article VI, Section 6.)

Furthermore, Article IV, Section 3 (supra) vests absolute discretion in the City

Council as to how much compensation should be paid. Such discretion cannot be delegated, abrogated or ignored.

We deal here not with the adequacy or inadequacy of the salary ordinance (No. 3936, amending Ord. No. 3921) passed by the City Council on September 29, 1970, but rather our concern is with the extent to which the State courts have undertaken to rewrite a new salary ordinance superimposing their own interpretation of what constitutes the correct amount of compensation to City employees.

B. UNDER THE U.S. AND CALIFORNIA CONSTITUTIONS (CITED SUPRA) THE COURT BELOW DENIED DUE PROCESS OF LAW TO PETITIONER BY CONSTRUING THE MEMORANDUM OF UNDERSTANDING TO BE A BINDING CONTRACT WHICH FIXED THE COMPENSATION FOR CITY EMPLOYEES: EVEN IF FOUND TO BE A CONTRACT, THE FAILURE TO COMPLY WITH CITY CHARTER AND STATE LAW PROVISIONS REGULATING SUCH CONTRACTS PRECLUDES THE GRANTING OF THE RELIEF SOUGHT.

The California Supreme Court, in contradiction of its own opinion, at one point makes reference to the memorandum:

> "What point would there be in reducing it to writing, if the terms of the contract were of no legal significance?" (Emphasis added.)

If indeed we are dealing with a contract, then we are met head on by Article IV, Section 3 of the Charter (supra) which permits employee compensation to be regulated by ordinance only. But even if we make believe that Article IV, Section 3 does not exist, there is still another

mountain to overcome.

The Charter prescribes certain procedures which must be followed in order to bind the City to any proposed contract by virtue of which any money shall or may become payable by the City (Article XI, Section 1):

1. The proposed contract must be presented to the Controller; and

2. The Controller must certify that an applicable appropriation of fund exists; and

3. The Controller must certify that there remains unexpended and unapplied in the City treasury a sufficient balance to pay the estimated expense to be incurred; and

4. A sufficient appropriation must be made by resolution of City Council (Article XI, Section 4).

It becomes clear that not only weren't these procedures followed, but the plaintiffs were put on constructive notice that these procedures couldn't have been followed. At the time the memorandum was approved, the survey had not yet been taken, no data had been collected and no results could have ever been reasonably predicted. Certainly there was nothing that could have been presented to the Controller for certification.

The Court bypassed this problem by conveniently vascillating between "contract" and "legislative act" as required to reach the end result.

If the Memorandum of Understanding represented any kind of agreement at all, it simply bound the City to take the salary survey, which it did. To read any more than that into the memorandum violates common sense and the plain language of the memorandum.

The above provisions of the Charter were enacted to protect and benefit the citizens of the City of Glendale. Its purpose is to achieve a balanced budget through controlled spending of tax levy funds. The circumventing of these Charter requirements in this respect raises serious and substantial constitutional questions respecting the rights of taxpayers for whose benefit these laws were passed. It is absolutely essential for the continued faith of citizens in a democratic form of government, and for the sound, fiscal management of municipal governments, that legislative enactments, absent a declaration of unconstitutionality, be protected from unwarranted and unconstitutional judicial intrusion.

Article XVI, Section 18 of the California Constitution states in part:

> "No . . . city . . . shall incur any indebtedness or liability <u>in any manner or for any purpose</u> exceeding

> in any year the income and revenue provided for such year, without the assent of two-thirds of the qualified electors thereof, voting at an election to be held for that purpose . . ." (Emphasis added.)

The foregoing provision was enacted for the mutual benefit of all of the taxpayers of the City of Glendale. It would have been, and still is, constitutionally invalid for a city to bypass such an election and bind themselves to any type of agreement whatsoever where the liability pursuant to such an agreement could potentially exceed the income and revenue of the city for that year.

Clearly, then, the Council did not thereafter lose its authority, but retained its discretion to determine employee compensation upon a review of the results from the salary survey. Only in this way could the purpose and spirit of Section 18 (supra) have been effectuated; only in this way could the memorandum have remained constitutionally valid at all.

C. IT WAS A VIOLATION OF DUE PROCESS (U.S. AND CALIFORNIA CONSTITUTIONS, SUPRA) AND THE DOCTRINE OF SEPARATION OF POWERS (U.S. CONSTITUTION, ARTICLE I, SECTION 1; ARTICLE III, SECTION 1; CALIFORNIA CONSTITUTION, ARTICLE III, SECTION 3) FOR THE COURT TO COMPEL THE PAYMENT OF EMPLOYEE SALARIES CONTRARY TO THE PROVISIONS OF AN EXISTING SALARY ORDINANCE AND NOTWITHSTANDING THE TOTAL ABSENCE OF ANY OTHER CORRESPONDING SALARY ORDINANCE OR APPROPRIATION AUTHORIZING SUCH PAYMENT: BY SUBSTITUTING ITS OWN DISCRETION AND INTERPRETATION FOR THAT OF THE LEGISLATIVE BODY, THE COURT ENCROACHED UNCONSTITUTIONALLY UPON THE POWERS OF A COEXISTING AND COEQUAL BRANCH OF THE GOVERNMENT.

The act of the California Supreme Court, remanding the case for joinder of the "appropriate city officials" and the "ministerial acts of computing and paying the salaries as fixed by the judgment," ignores the fundamental structure

of a corporation, municipal or otherwise. A municipal corporation is a creature of statute. It acts by statute. It functions by statute. It has no authority to do, or understanding of, anything other than what it is programmed to do by statute. The Court's decision also ignores the theory of separation of powers, a doctrine conceived at the time of our nation's birth, and one deeply imbedded in both our federal and state trifurcated systems of government. (U.S. and California Constitutions, supra.)

The doctrine precludes a court from commanding or prohobiting a legislative act at the local level (or state level). Monarch Cablevision v. City Council, City of Pacific Grove (1966) 239 Cal.App.2d 206, 48 Cal.Rptr. 550; City Council of City of Santa Barbara v. Superior Court (1960) 179 Cal.App.2d 389, 3 Cal.Rptr. 796.

It also prohibits judicial interference with the legislative process. Sladovich v. Fresno County (1958) 158 Cal.App.2d 230, 322 P.2d 565.

The Court below attempted, by its decision, to do more than invalidate the existing salary ordinance (No. 3936). It endeavored to redefine and judicially legislate an entirely brand new ordinance, one which was not in existence and which was not approved by the legislative body possessing that power.

Courts have no means, and no power, to avoid the effects of legislative nonaction. Therefore, when the legislature fails to make an appropriation, the courts cannot remedy that evil. California State Employees' Assn. v. State (1973) 32 Cal.App.3d 103, 108 Cal.R Rptr. 60.

In the absence of an ordinance and authorizing appropriation, ministerial City officials have no authority to pay out any money. To the contrary, the official who acts in the absence of such ordinance and appropriation risks both civil and criminal penalties. (City Charter, Article XXIII, Sections 13 and 27.)

The California Supreme Court erred when it embarked upon "the murky project of ordering legislative members to adopt an ordinance," no matter how desirable they believed the ordinance to be. (Dissenting opinion of Justice Stanley Mosk.)

D. IT WAS A VIOLATION OF DUE PROCESS (CITED, SUPRA) AND SEPARATION OF POWERS (CITED, SUPRA) FOR THE COURT TO INTERPRET THE MEMORANDUM OF UNDERSTANDING TO BE A BINDING CONTRACT WHEREIN THE COUNCIL DELEGATED ITS DISCRETIONARY FUNCTION TO DETERMINE EMPLOYEE SALARIES, AND THAT ALL SUBSEQUENT ACTS WERE MINISTERIAL: EVEN AN INTERPRETATION UNDER CALIFORNIA CONTRACT LAW WOULD REQUIRE A DIFFERENT RESULT THAN THAT ARRIVED AT BY THE COURT.

The purpose of the Meyers-Milias-Brown Act (hereinafter referred to as "the Act") is to promote full communication between public employers and their employees. Nothing in the Act supersedes the provisions of existing State law and the charters, ordinances, and rules of local public agencies. California Government Code Section 3500.

In other words, discretion which was vested in a legislative body prior to the Act still remained in that body subsequent to it.

It is incongruous to contend that, by virtue of any memorandum passed pursuant to the Act, the legislative body delegated or abdicated its discretion in setting salaries for City employees. It is equally incongruous to argue that the City Council would bind themselves and the City to a contract for employee salaries in an unspecified amount. The approval of the memorandum did not constitute an ordinance; the statutory prerequisites to any binding contract were totally lacking; and it was beyond the power and authority of the City Council to delegate such discretionary responsibility in any event.

Section 1644 of the California Civil Code states:

> "The words of a contract are to be understood in their ordinary and popular sense . . . unless a special meaning is given to them by usage, in which case the latter must be followed." (Emphasis added.)

Section 1646 of the same code says:

> "A contract is to be interpreted according to the law and usage of the place where it is to be performed; or, if it does not indicate a place of performance, according to the law and usage of the place where it is made." (Emphasis added.)

Section 1647 states:

> "A contract may be explained by reference to the circumstances under which it was made, and the matter to which it relates." (Emphasis added.)

The evidence in the trial court was uncontroverted that the City had never before used an arithmetical average in computing salary or wager ates for City employees. Notwithstanding this fact, the trial court determined that the City bound itself to pay salaries above the arithmetical average, a term never even used in the Memorandum of Understanding. The memorandum called for acts to be done in Glendale, and it was signed and approved in Glendale. The practice of the City with respect to prior salary computations was a matter of public record. No party to the memorandum could have contemplated any specific amount until the results of the survey had been received, analyzed and interpreted.

The memorandum itself expressly reserves the legislative discretion of the Council:

> "The items in this agreement are subject to the approval of the City Manager and the City Council of the City of Glendale, and will be placed into effect upon the taking of administrative action by the city manager's office and the

adoption of the necessary ordinances and resolutions by the City Council if acceptable to them." (Emphasis added.)

It is paradoxical indeed to contend that the approval of a memorandum, which expressly retains legislative discretion, itself constitutes a relinquishment of that discretion.

It is clear then that at all times, both prior and subsequent to the approval of the memorandum, the City Council did not and could not divest itself of its legal duty and legislative discretion to determine the compensation to be paid City employees. The Court below erred in concluding otherwise.

E. THE CITY OF GLENDALE WAS DENIED BOTH FEDERAL AND STATE CONSTITUTIONAL GUARANTEES OF DUE PROCESS BECAUSE THE COURT BELOW FAILED TO RECOGNIZE APPLICABLE STATE AND LOCAL LAWS WHICH WERE IN ACCORD WITH EACH OTHER AND WHICH THE COURT BELOW DID NOT DECLARE CONSTITUTIONALLY INVALID.

California has, with the enactment of Article XI, Sections 3 and 5, of its Constitution, elected to permit cities to have and adopt charters by which they may run municipal affairs:

Section 3(a):

"For its own government . . . a city may adopt a charter . . ."

Section 5(a):

"It shall be competent in any city charter to provide that the city governed thereunder may make and enforce all ordinances and regulations in respect to municipal affairs subject only to restrictions and limitations provided

in their several charters . . . City charters adopted pursuant to this Consitution shall supersede any existing charter, and with respect to municipal affairs shall supersede all laws inconsistent therewith." (Emphasis added.)

The City of Glendale has adopted such a charter and is thus subject to home rule in all municipal affairs.

Section 5(b) of Article XI (California Constitution) clearly makes the determination of employee salaries a municipal affair.

> "It shall be competent in all city charters to provide . . . for . . . the terms for which the several municipal officers and employees whose compensation is paid by the city shall be elected or appointed . . . and for their compensation, and for the number of deputies, clerks and other employees that each shall have, and for the compensation . . . of such deputies, clerks and other employees." (Emphasis added.)

It is clear, then, that both State and local law are both consistent with each other: Both place the source of municipal administration in the city charter. Both concede that providing for employee compensation is a

municipal affair and is well within the jurisdiction of the city charter.

It is the province of the judiciary to declare the law as it is, and not as the Court deems it. Kelley v. Aarons (D.C.Cal. 1917) 238 F.996, affirmed Kelley v. Gill, 38 S.Ct. 38, 245 U.S. 116, 62 L.Ed. 185; Kobilkin v. Pillsbury (C.C.A. Cal. 1939) 103 F.2d 667, cert. granted 60 S.Ct. 97, 308 U.S. 530, 84 L.Ed. , affirmed 60 S.Ct. 465, rehearing denied 60 S.Ct. 584; San Francisco Shopping News Co. v. City of South San Francisco (C.C.A. Cal. 1934) 69 F.2d 879, cert. den. 55 S. Ct. 122, 293 U.S. 606, 79 L.Ed. 697.

Legislative finds will not be disturbed by the courts in the absence of a palpable abuse of discretion. Nev-Cal Elect. Securities Co. v. Imperial Irr. District (C.C.A. Cal. 1936) 85 F.2d 886, cert. den. 57 S.Ct. 493, 300 U.S. 662, L.Ed. 871; In re Shear (D.C. Cal. 1956) 139 F.Supp. 217; U.S. v. Mock (D.C. Cal. 1956) 143 F.Supp. 661.

As far back as 1899, due process of law was defined so as to preclude the exercise by the courts of those powers constitutionally vested in the other branches or departments of government. Western Union Tel. Co. v. Myatt (1899) 98 F. 335, 354.

The Court below did not declare the present existing salary ordinance to be so palpably unreasonable and arbitrary as to

amount to a gross abuse of discretion. Neither did it conclude that the ordinance was constitutionally invalid on any other basis. The Court sidestepped this problem and then proceeded to legislate a new and different ordinance. Such action constitutes an unmistakable denial of due process to petitioner.

This Petitioner has found no cases which deny the right of due process to a municipal corporation which attempts to abide by State and local law, applicable and controlling of such municipality, where such laws have not been voided by any court of competent jurisdiction.

The instant case is not an attempt to invoke the provisions of the Fourteenth Amendment "in opposition to the will of its creator," but rather to urge recognition by the Court below of State and local laws which are not in conflict with each other, and which require conduct in conflict with that ordered by the Court.

The California Supreme Court's decision flies in the face of legal precedent and Federal and State law. The City of Glendale and its constituents will be deprived of substantial property rights by virtue of the judgment below, since any judgment will, of necessity, be paid by the taxpapers of the City of Glendale. The ministerial officers of the City, joined by order of the Court below, will be placed in the precarious position of being in contempt of court

should they not follow its order, or being in violation of the lawful provisions of the City's Charter (cited, supra) if they do.

Under any reasonable interpretation of the Memorandum of Understanding expressed by the California Supreme Court, its decision must yield to State and local law, and the Federal and State Constitutions.

CONCLUSION

The United States Constitution, as well as the California State Constitution, defines the authority, power and limitations of the three respective branches of government. Each branch is forbidden to trespass on the constitutional domain of any other branch.

The California Supreme Court had the judicial power to consider the existing salary ordinance and pass upon its ability to withstand constitutional scrutiny. In going beyond this, and ordering payment of a specific sum other than that provided for in the existing ordinance, the Court has migrated into a region entrusted to the legislative branch of government.

Courts, like municipalities, must look to higher sources for authority for their actions. Once those boundaries are traversed, the

Court's actions become null and void.

Whether one adopts the Court's characterization of the Memorandum of Understanding as a contract, or its later reference to it as a legislative act, the facts and evidence in this case overwhelmingly indicate unwarranted and excessive judicial infringement into the legislative branch of government and the constitutional protections guaranteed by the U.S. and California Constitutions.

We respectfully request this Court to grant Petitioner's Petition for Writ of Certiorari.

Respectfully submitted,

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DENNIS H. SCHUCK,
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Attorneys for Petitioners

APPENDIX A

U.S. CONSTITUTION

ARTICLE I, Section 1

All legislative powers herein granted shall be vested in a Congress of the United States which shall consist of a Senate and House of Representatives.

ARTICLE III, Section 1

The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish.

AMENDMENT V (Applicable portion)

". . . nor shall any person . . . be deprived of life, liberty or property without due process of law . . . "

AMENDMENT XIV, Section I (Applicable portion)

". . . nor shall any State deprive any person of life, liberty or property, without due process of law . . . "

CALIFORNIA CONSTITUTION

ARTICLE I, Section 1

All people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing and protecting property, and pursuing and obtaining safety, happiness and privacy.

ARTICLE I, Section 15

Persons may not . . . be deprived of life, liberty, or property without due process of law.

ARTICLE III, Section 3

The powers of State government are legislative, executive and judicial. Persons charged with the exercise of one power may not exercise either of the others except as permitted by this Constitution.

ARTICLE XI, Section 3(a) (Applicable portions)

For its own government . . . a city may adopt a charter by majority vote of its electors voting on the question . . . The provisions of a charter are the law of the State and have the force and effect of legislative enactments.

ARTICLE XI, Section 5(a)

It shall be competent in any city charter to provide that the city governed thereunder may make and enforce all ordinances and regulations in respect to municipal affairs, subject only to restrictions and limitations provided in their several charters and in respect to other matters they shall be subject to general laws. City charters adopted pursuant to this Constitution shall supersede all laws inconsistent therewith.

ARTICLE XVI, Section 18 (Applicable portion)

No . . . city . . . shall incur any indebtedness or liability in any manner or for any purpose exceeding in any year the income and revenue provided for such year, without the assent of two-thirds of the qualified electors thereof, voting at an election to be held for that purpose . . .

CALIFORNIA CIVIL CODE

Section 1644:

The words of a contract are to be understood in their ordinary and popular sense, rather than according to their strict legal meaning; unless used by the parties in a technical sense, or unless a special meaning is given to them by usage, in which case the latter must be followed.

Section 1646:

A contract is to be interpreted according to the law and usage of the place where it is to be performed; or, if it does not indicate a place of performance, according to the law and usage of the place where it is made.

Section 1647:

A contract may be explained by reference to the circumstances under which it was made and the matter to which it relates.

GOVERNMENT CODE

Section 3500. Purpose and Intent

It is the purpose of this chapter to promote full communication between public employers and their employees by providing a reasonable method of resolving disputes re garding wages, hours, and other terms and conditions of employment between public employers and public employee organizations. It is also the purpose of this chapter to promote the improvement of personnel management and employer-employee relations within the various public agencies in the State of California by providing a uniform basis for recognizing the right of public employees to join organizations of their own choice and be represented by such organizations in their

employment relationships with public agencies. Nothing contained herein shall be deemed to supersede the provisions of existing state law and the charters, ordinances, and rules of local public agencies which establish and regulate a merit or civil service system or which provide for other methods of administering employer-employee relations nor is it intended that this chapter be binding upon those public agencies which provide procedures for the administration of employer-employee relations in accordance with the provisions of this chapter. This chapter is intended, instead, to strengthen merit, civil service and other methods of administering employer-employee relations through the establishment of uniform and orderly methods of communication between employees and the public agencies by which they are employed.

GLENDALE CITY CHARTER

ARTICLE IV, Section 3

The members of the council shall each be paid twenty-five dollars for each meeting of the council attended, but not exceeding six meetings in each month. The board of education shall serve without compensation. All other officers, assistants, deputies, clerks and employees shall receive such compensation as the council may from time to time determine by ordinance.

ARTICLE VI, Section 6 (Applicable portion)

The enacting clause of every ordinance passed by the council shall be: "Be it ordained by the council of the City of Glendale . . ."

At least five days must elapse between the introduction and the final passage of any ordinance . . .

A final vote on any ordinance or any vote on any appropriation must be taken only at a

regular or adjourned regular meeting. Every ordinance must be signed by the mayor and attested by the clerk. Notice thereof shall be published once in a newspaper of general circulation . . .

In the publication of every ordinance the advertisement shall contain a statement of the title, number and date of the ordinance, a brief statement of the nature of the ordinance, and a reference to a copy of the ordinance which shall be on file and available for public inspection at all reasonable times in the office of the city clerk.

ARTICLE XI, Section 1 (Applicable portion)

. . . The city clerk shall furnish the controller with copies of all ordinances, resolutions and orders of the council making appropriations or authorizing expenditures of money for any purpose. All . . . orders or contracts proposed to be entered into by the city by virtue of which any money shall or may become payable by the city . . . the expense of which is to be paid by assessments upon properties benefited or affected thereby, shall before becoming effective, on behalf of the city, be presented to the controller and have endorsed thereon his certificate that there remains unexpended and unapplied in the city treasury as provided by this Charter, a balance of the appropriation or fund applicable thereto sufficient to pay the estimated expense to be incurred during the then current fiscal year under said order or contract

as estimated by the board or officer making the same, or that adequate provision therefor has been made in the tax levy, or by other revenues to be received by the city as estimated in the budgets . . .

ARTICLE XI, Section 3 (Applicable portion)

All demands against the city shall, before being paid, be presented to and approved by the proper commission or officer, as herein provided. Demands for which no appropriation has been made shall be presented to the council . . .

ARTICLE XI, Section 4 (Applicable portion)

All demands approved by the proper board, commission or officer shall be presented to the city controller, who shall examine the same; and if the amount thereof is legally due and there remains on his books an unexhausted balance or an appropriation against which the same may be charged, he shall approve such demand and draw and sign his warrant on the treasurer therefor, payable out of the proper fund . . . Such warrants when presented to the treasurer shall be paid by him out of the fund therein designated, if there be sufficient money in such fund for that purpose.

ARTICLE XXIII, Section 13

Every officer who shall willfully approve, allow or pay any demand on the treasury not authorized by law, shall be liable to the city individually and on his official bond for the

amount of the demand so approved, allowed or paid, and shall forfeit such office and be forever disbarred and disqualified from holding any position in the service of the city.

ARTICLE XXIII, Section 27 (Applicable portion)

The violation of any provision of this Charter shall be deemed a misdemeanor. The council may make the violation of any ordinance a misdemeanor and fix punishments therefor, not exceeding a fine of five hundred dollars or imprisonment not exceeding six months, or both.

ORDINANCE NO. 3936

AN ORDINANCE OF THE CITY OF GLENDALE AMENDING ORDINANCE NO. 3921 RELATING TO SALARIES.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF GLENDALE:

SECTION 1. Section 6.1 of Ordinance No. 3921 is amended to read:

SECTION 6.1. CLERICAL, FISCAL AND ADMINISTRATIVE.

Code	Class Title	Salary Range No.
120	Bookkeeping Machine Operator	34
154	Chief Clerk	48
232	Clerical Aide	210
235	Clerk I	26
238	Clerk II	31
241	Clerk III	37
244	Clerk-Stenographer	34
247	Clerk-Typist I	28
250	Clerk-Typist II	32
324	Duplicating Shop Operator	40
327	EDP Assistant Programmer Analyst	52
330	EDP Equipment Operator	43
331	EDP Senior Equipment Operator	46
333	EDP Operations Supervisor	56
336	EDP Programmer Analyst	59
337	EDP Principal Programmer Analyst	63
338	EDP Systems Analyst	60
339	EDP Director	68
507	Key Punch Operator	32
510	Key Punch Supervisor	37
522	Legal Secretary	44
743	Secretary-Stenographer I	39
746	Secretary-Stenographer II	42
749	Secretary to City Clerk	44
752	Secretary to City Manager	48

The letters "EDP" used herein shall be understood to mean "Electronic Data Processing."

SECTION 2. Section 6.2 of Ordinance No. 3921 is amended to read:

SECTION 6.2. CLERICAL, FISCAL AND ADMINISTRATIVE (continued).

Code	Class Title	Salary Range No.
003	Accountant	49
006	Administrative Analyst	51
040	Assistant City Clerk	55
044	Assistant City Controller	67
186	City Clerk	600
190	City Controller	77
214	City Treasurer	500
256	Commercial Representative	39
290	Deputy City Clerk	42
294	Deputy City Treasurer I	38
298	Deputy City Treasurer II	43
537	License Investigator I	42
540	License Investigator II	45
597	Meter Reader	37
612	Parking Attendant	20
621	Parking Meter Collector	36
624	Parking Meter Serviceman	40
707	Real Property Agent and Claims Investigator	50
756	Senior Accountant	57
798	Senior Meter Reader	41
800	Senior Parking Attendant	28
839	Special Collector	36
918	Traffic and Parking Foreman	49

SECTION 3. Section 6.3 of Ordinance No. 3921 is amended to read:

SECTION 6.3. CLERICAL, FISCAL AND ADMINISTRATIVE (continued).

Code	Class Title	Salary Range No.
009	Administrative Intern	250
028	Assistant Buyer	44
030	Assistant Chief Examiner	69
052	Assistant City Manager	650
076	Assistant to City Manager	66
141	Buyer	53
162	Chief Examiner	73
198	City Manager	800
220	Civil Defense Property Officer	47
253	Commercial Operations Supervisor	62
315	Director of Purchases	67
440	Executive Assistant	63
594	Mechanical Stock Clerk	36
630	Personnel Analyst	55
633	Personnel Trainee	47
687	Principal Personnel Analyst	60
723	Research and Budget Officer	66
760	Senior Administrative Analyst	56
804	Senior Personnel Analyst	61
863	Storekeeper I	40
866	Storekeeper II	48
941	Warehouseman	36

SECTION 4. Section 6.4 of Ordinance No. 3921 is amended to read:

SECTION 6.4. ENGINEERING AND RELATED TECHNICAL.

Code	Class Title	Salary Range No.
060	Assistant Engineering Technician	43
129	Building Inspector I	50
130	Building Inspector II	53
223	Civil Engineer	67
226	Civil Engineering Assistant	55
229	Civil Engineering Associate	61
262	Construction Inspector	53
321	Draftsman	43
403	Electrical Inspector	50
429	Engineering Aide	37
432	Engineering Technician	49
480	Heating, Ventilating and Air Conditioning Inspector	50
486	Industrial Waste Inspector	51
498	Instrumentman	49
516	Lath and Plaster Inspector	50
639	Plan Checker	55
642	Planning Assistant	47
645	Planning Associate	52
648	Planner	56
651	Planning Director	76
654	Plumbing Inspector	50
679	Principal Engineering Technician	61
691	Principal Planner	66
725	Right-of-Way Agent	56
728	Rodman and Chainman	43
768	Senior Building Inspector	54
776	Senior Construction Inspector	59
780	Senior Draftsman	49
796	Senior Engineering Technician	55
806	Senior Planner	61
890	Superintendent of Buildings	70
893	Supervising Civil Engineering Associate	64
905	Survey Party Chief	55
992	Zoning Administrator	64

SECTION 5. Section 6.5 of Ordinance No. 3921 is amended to read:

SECTION 6.5. ENGINEERING AND RELATED TECHNICAL (continued).

Code	Class Title	Salary Range No.
048	Assistant City Engineer	71
064	Assistant General Manager and Principal Engineer	79
158	Chief Electric Works Engineer	75
174	Chief Water Works Engineer	75
194	City Engineer	77
210	City Traffic Engineer	68
312	Director of Public Works	84
391	Electrical Engineer	68
395	Electrical Engineering Assistant	56
399	Electrical Engineering Associate	62
419	Electrical Sales Representative	52
468	General Manager and Chief Engineer	700
573	Mechanical Engineer	66
576	Mechanical Engineering Assistant	55
579	Mechanical Engineering Associate	61
683	Principal Mechanical Engineer	72
695	Principal Structural Engineer	72
772	Senior Civil Engineer	70
792	Senior Electrical Engineer	71
824	Senior Water Works Engineer	71
878	Structural Engineer	66
881	Structural Engineering Assistant	55
884	Structural Engineering Associate	61
896	Supervising Electrical Engineering Associate	68
899	Supervising Structural Engineering Associate	67
920	Traffic Engineering Assistant	55
923	Traffic Engineering Associate	61

SECTION 6. Section 6.6 of Ordinance No. 3921 is amended to read:

SECTION 6.6. LABOR, LABOR SUPERVISION AND SKILLED TRADES.

Code	Class Title	Salary Range No.
088	Automotive Body Repairman	46
092	Automotive Equipment Painter	46
104	Automotive Serviceman	37
117	Blacksmith and Welder	46
123	Bookmobile Operator	39
132	Building Repair Foreman	46
138	Building Repairman	43
144	Carpenter	45
150	Cement Worker Finisher	44
271	Custodial Worker I	31
274	Custodial Worker II	35
424	Electrician	48
426	Elevator Operator	27
433	Equipment Mechanic I	46
434	Equipment Mechanic II	48
435	Equipment Operator I	40
438	Equipment Operator II	46
477	Heating and Air Conditioning Repairman	48
487	Inspector	43
564	Machinist	46
567	Maintenance Man	36
570	Maintenance Superintendent, Municipal Buildings	56
571	Mechanic Helper	39
585	Mechanical Repair Helper	38
588	Mechanical Repairman I	42
591	Mechanical Repairman II	48
600	Motor Sweeper Operator	45

Code	Class Title	Salary Range No.
603	Painter	45
722	Refuse Collection Foreman	49
736	Sanitation Crewman	38
740	Sanitation Superintendent	66
818	Senior Refuse Foreman	51
829	Shop Foreman	52
830	Shop Superintendent	57
845	Steam Plant Maintenance Supervisor	56
848	Steam Plant Mechanic I	46
851	Steam Plant Mechanic II	50
854	Steam Plant Operation Supervisor	62
857	Steam Plant Operator I	45
860	Steam Plant Operator II	51
935	Truck Operator	42
938	Utility Welder	50
989	Yard Attendant	36

SECTION 7. Section 6.7 of Ordinance No. 3921 is amended to read:

SECTION 6.7. LABOR, LABOR SUPERVISION AND SKILLED TRADES (continued).

Code	Class Title	Salary Range No.
111	Auxiliary Operator	39
582	Mechanical Maintenance and Warehouse Superintendent	62
698	Pumping Plant Operator	4-
820	Senior Street Foreman	53
827	Sewer Maintenance Man	40
834	Sign Painter	45
869	Street Foreman	51
872	Street Maintenance Man	39
875	Street Superintendent	66
924	Traffic Painter	40
947	Water Construction Supervisor	58
950	Water Distribution Inspector	43
953	Water Foreman I	47
956	Water Foreman II	53
959	Water Meter Repairman I	40
962	Water Meter Repairman II	46
965	Water Production and Maintenance Supervisor	53
968	Water Production and Storage Foreman	48
971	Water Service and Meter Supervisor	51
974	Water Service Investigator	45
977	Water Superintendent	66
980	Water System Repairman	45
983	Water Utilityman I	41
986	Water Utilityman II	43

SECTION 8. Section 6.8 of Ordinance No. 3921 is amended to read:

SECTION 6.8. LABOR, LABOR SUPERVISION AND SKILLED TRADES (continued).

Code	Class Title	Salary Range No.
018	Appliance Service Foreman	51
021	Appliance Serviceman	46
170	Chief Steam Plant Engineer	69
343	Electric Meters and Services Supervisor	62
347	Electric Overhead Supervisor	63
351	Electric Station Foreman	53
355	Electric Station Operator	41
359	Electric Test Assistant	39
363	Electric Test Foreman	58
367	Electric Test Repairman I	46
371	Electric Test Repairman II	54
375	Electric Unnderground and Station Supervisor	63
379	Electric Utilityman I	40
383	Electric Utilityman II	48
387	Electric Utilityman III	50
407	Electrical Mechanical Foreman	58
411	Electrical Mechanical	

	Repairman I	47
415	Electrical Mechanical Repairman II	53
423	Electrical Superintendent	68
492	Instrument and Laboratory Technician I	46
495	Instrument and Laboratory Technician II	51
549	Line Foreman I	56
552	Line Foreman II	59
556	Lineman	54
558	Lineman Helper	40
561	Line Truckman	41
784	Senior Electric Station Foreman	56
788	Senior Electric Station Operator	51
944	Watch Engineer	57

SECTION 9. Section 6.9 of Ordinance No. 3921 is amended to read:

SECTION 6.9. PARKS, RECREATION AND LIBRARIES.

Code	Class Title	Salary Range No.
024	Arts and Crafts Attendant	29
056	Assistant Director of Parks and Recreation	65
072	Assistant to Auditorium Supervisor	37
084	Auditorium Supervisor	42
462	Gardener I	37
465	Gardener II	41
474	Groundskeeper	40
513	Landscape Architect	56
543	Lifeguard I	240
546	Lifeguard II	250
606	Park Foreman	50
609	Park Guard	250
625	Parks Maintenance Supervisor	53
710	Recreation Attendant	200
713	Recreation Leader	32
716	Recreation Supervisor	51
719	Recreation Superintendent	59
816	Senior Recreation Leader	45
911	Swimming Instructor	250
914	Swimming Pool Manager	41
926	Tree Trimmer	43
929	Tree Trimmer Crew Foreman	46
932	Tree Trimmer Foreman	51

SECTION 10. Section 6.10 of Ordinance No. 3921 is amended to read:

SECTION 6.10. PARKS, RECREATION AND LIBRARIES (continued).

Code	Class Title	Salary Range No.
012	Adult Librarian	57
080	Athletic Official	280
126	Branches and Circulation Librarian	57
127	Brand Art Center Librarian	57
147	Catalog Librarian	57
166	Chief Librarian	73
178	Children's Librarian	57
268	Cultural Arts Advisor	53
309	Director of Parks and Recreation	73
318	Display Artist	45
441	Exhibits Coordinator	46
525	Librarian I	47
528	Librarian II	51
531	Library Monitor	260
534	Library Page	16
836	Special Activity Leader	37
887	Student Librarian	245

SECTION 11. Section 6.11 of Ordinance No. 3921 is amended to read:

SECTION 6.11. COMMUNICATIONS, PUBLIC SAFETY, LEGAL AND PUBLIC HEALTH.

Code	Class Title	Salary Range No.
015	Animal Control Officer	40
114	Battalion Chief	66
269	Communications Operator	36
302	Deputy Fire Chief	70
443	Fire Alarm Technician I	44
444	Fire Alarm Technician II	50
447	Fire Captain	61
450	Fire Chief	78
453	Fire Engineer	55
459	Fireman	50
483	Identification Technician	47
701	Radio Engineer	55
704	Radio Technician	45
764	Senior Animal Control Officer	42
812	Senior Radio Technician	49
842	Special Officer	220
902	Supervisor of Records and Identification	55
917	Switchboard Operator	32

SECTION 12. Section 6.12 of Ordinance No. 3921 is amended to read:

SECTION 6.12. COMMUNICATIONS, PUBLIC SAFETY, LEGAL AND PUBLIC HEALTH (continued).

Code	Class Title	Salary Range No.
036	Assistant City Attorney	68
182	City Attorney	86
202	City Nurse	44
206	City Physician	400
217	Civil Defense Coordinator	61
282	Deputy City Attorney	60
306	Deputy Police Chief	70
489	Instructor—Civil Defense	270
501	Jailer I	44
504	Jailer II	47
519	Law Clerk	37
615	Parking Checker	38
657	Police Captain	67
660	Police Chief	78
663	Police Detective	54
666	Police Lieutenant	64
669	Policeman	51
672	Police Sergeant	58
675	Policewoman	51
706	Rangemaster	40
731	Safety and Training Officer	59
732	Safety Inspector	47
766	Senior Assistant City Attorney	74

SECTION 13. This ordinance shall take effect and be in force on the 1st day of October, 1970.

Passed by The Council of the City of Glendale on the 29th day of September, 1970.

WARREN F. HAVERKAMP,
Mayor pro tem.

ATTEST:
JOHN H. WALTERS,
City Clerk.

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES)SS.
CITY OF GLENDALE)

I, JOHN H. WALTERS, City Clerk of the City of Glendale, certify that the foregoing ordinance was passed by The Council of the City of Glendale, California, at a regular meeting held on the 29th day of September, 1970, and that the same was passed by the following vote:

Ayes: Allen, Peters, Watson, Haverkamp.

Noes: None.

Absent: Perkins.

JOHN H. WALTERS,
City Clerk.

Oct. 2, 1970.

ORDINANCE NO. 3921

AN ORDINANCE OF THE CITY OF GLENDALE PROVIDING FOR CERTAIN OFFICERS, SUBORDINATE OFFICERS, ASSISTANTS, DEPUTIES, CLERKS, AND EMPLOYEES OF THE CITY OF GLENDALE AND FOR THEIR COMPENSATION.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF GLENDALE:

SECTION 1. CLASSIFICATIONS AND POSITIONS—CREATED AND DEFINED. The offices and employments hereinafter designated in this ordinance, except insofar as they are specifically provided for by The Charter of the City of Glendale, are hereby created.

As used herein, a "position" shall be deemed to mean an office or employment calling for the rendition of service by one person.

As used herein, a "classification" shall be deemed to mean a group of positions having sufficiently similar duties, responsibilities and qualifications to be designated by the same descriptive title, and as to which the same salary range may be made to apply with equity.

As used herein, a "safety member" shall be deemed to mean an employee who is classified as a "local safety member" under the State Employee's Retirement Law.

SECTION 2. DESCRIPTIONS OF CLASSIFICATIONS. The description of classifications herein mentioned, except as may be otherwise provided by The Charter of the City of Glendale, shall be those which are or may be hereafter determined by "The Classification Plan and Class Specifications for Glendale, California," adopted by the Civil Service Commission of the City of Glendale on the 10th day of May, 1940, and any amendments thereof.

SECTION 3. As to the persons in the various classifications herein mentioned subsequent to the effective date of this ordinance, the increases or decreases in rates of compensation set forth in this amending ordinance shall be effective July 1, 1970.

SECTION 4. SCHEDULE OF COMPENSATION RATES. The following schedule of compensation rates shows standard salary range numbers, the salary steps designated by letters, and unless otherwise specified, the full-time monthly rates (in dollars) for all classifications.

Standard Salary Range No.	Salary Steps A	B	C	D	E
16	307	322	340	359	380
17	313	331	350	370	390
18	322	340	359	380	401
19	331	350	370	390	410
20	340	359	380	401	421
21	350	370	390	410	434
22	359	380	401	421	444
23	370	390	410	434	458
24	380	401	421	444	469
25	390	410	434	458	482
26	401	421	444	469	495
27	410	434	458	482	509
28	421	444	469	495	523
29	434	458	482	509	536
30	444	469	495	523	553
31	458	482	509	536	567
32	469	495	523	553	580
33	482	509	536	567	597
34	495	523	553	580	612
35	509	536	567	597	629
36	523	553	580	612	644
37	536	567	597	629	663
38	553	580	612	644	682
39	567	597	629	663	699
40	580	612	644	682	718
41	597	629	663	699	736
42	612	644	682	718	757
43	629	663	699	736	779
44	644	682	718	757	799
45	663	699	736	779	821
46	682	718	757	799	843
47	699	736	779	821	864
48	718	757	799	843	888
49	736	779	821	864	913
50	757	799	843	888	938
51	779	821	864	913	964
52	799	843	888	938	990
53	821	864	913	964	1016
54	843	888	938	990	1042
55	864	913	964	1016	1071
56	888	938	990	1042	1100
57	913	964	1016	1071	1130
58	938	990	1042	1100	1161
59	964	1016	1071	1130	1192
60	990	1042	1100	1161	1223
61	1016	1071	1130	1192	1257
62	1042	1100	1161	1223	1291
63	1071	1130	1192	1257	1326
64	1100	1161	1223	1291	1361
65	1130	1192	1257	1326	1399
66	1161	1223	1291	1361	1438
67	1192	1257	1326	1399	1476
68	1223	1291	1361	1438	1516
69	1257	1326	1399	1476	1556
70	1291	1361	1438	1516	1599
71	1326	1399	1476	1556	1642
72	1361	1438	1516	1599	1686
73	1399	1476	1556	1642	1731
74	1438	1516	1599	1686	1777
75	1476	1556	1642	1731	1825
76	1516	1599	1686	1777	1875
77	1556	1642	1731	1825	1926
78	1599	1686	1777	1875	1976
79	1642	1731	1825	1926	2031
80	1686	1777	1875	1976	2085
81	1731	1825	1926	2031	2142
82	1777	1875	1976	2085	2200
83	1825	1926	2031	2142	2260
84	1875	1976	2085	2200	2321
85	1926	2031	2142	2260	2384
86	1976	2085	2200	2321	2447
87	2031	2142	2260	2384	2513
88	2085	2200	2321	2447	2583
700	2414	2547	2687	2835	2991

SECTION 5. SCHEDULE OF COMPENSATION RATES — SPECIAL RATES. The following schedule of compensation rates is for classifications not within the standard salary ranges set forth in Section 4:

Salary Range No.	
200	$2.00 per hour
210	$2.34 per hour
220	$2.63 per hour
240	$2.74 per hour
245	$2.81 per hour
250	$3.06 per hour
260	$3.22 per hour
270	$3.22 to $5.14 per hour*
280	$5.54 to $6.65 per game*
290	$778 per month
400	$935 per month
500	$1390 per month
600	$1608 per month
625	$1875 per month
650	$2437 per month
800	$3243 per month

*Rate to be fixed by City Manager.

SECTION 6. CLASSIFICATION CODE AND COMPENSATION SCHEDULE. The Code number and the Salary Range number assigned

to each classification are set forth in Sections 6.1 to 6.12 inclusive of this ordinance.

SECTION 6.1. CLERICAL, FISCAL AND ADMINISTRATIVE.

Code	Class Title	Salary Range No.
120	Bookkeeping Machine Operator	34
154	Chief Clerk	48
232	Clerical Aide	210
235	Clerk I	25
238	Clerk II	30
241	Clerk III	36
244	Clerk-Stenographer	32
247	Clerk-Typist I	27
250	Clerk-Typist II	31
324	Duplicating Shop Operator	39
327	EDP Assistant Programmer Analyst	51
330	EDP Equipment Operator	42
331	EDP Senior Equipment Operator	46
333	EDP Operations Supervisor	54
336	EDP Programmer Analyst	59
337	EDP Principal Programmer Analyst	62
338	EDP Systems Analyst	59
339	EDP Director	65
507	Key Punch Operator	32
510	Key Punch Supervisor	37
522	Legal Secretary	42
743	Secretary-Stenographer I	37
746	Secretary-Stenographer II	40
749	Secretary to City Clerk	42
752	Secretary to City Manager	47

The letters "EDP" used herein shall be understood to mean "Electronic Data Processing."

SECTION 6.2. CLERICAL, FISCAL AND ADMINISTRATIVE (continued).

Code	Class Title	Salary Range No.
003	Accountant	48
006	Administrative Analyst	51
040	Assistant City Clerk	55
044	Assistant City Controller	66
186	City Clerk	600
190	City Controller	625
214	City Treasurer	500
256	Commercial Representative	38
290	Deputy City Clerk	41
294	Deputy City Treasurer I	38
298	Deputy City Treasurer II	42
537	License Investigator I	41
540	License Investigator II	45
597	Meter Reader	36
612	Parking Attendant	20
621	Parking Meter Collector	35
624	Parking Meter Serviceman	39
707	Real Property Agent and Claims Investigator	50
756	Senior Accountant	56
798	Senior Meter Reader	41
800	Senior Parking Attendant	28
839	Special Collector	36
918	Traffic and Parking Foreman	49

SECTION 6.3. CLERICAL, FISCAL AND ADMINISTRATIVE (continued).

Code	Class Title	Salary Range No.
009	Administrative Intern	245
028	Assistant Buyer	43
030	Assistant Chief Examiner	68
052	Assistant City Manager	650
078	Assistant to City Manager	66
141	Buyer	52
162	Chief Examiner	72
198	City Manager	800
220	Civil Defense Property Officer	47
253	Commercial Operations Supervisor	61
315	Director of Purchases	67
440	Executive Assistant	63
594	Mechanical Stock Clerk	36
630	Personnel Analyst	53
633	Personnel Trainee	290
687	Principal Personnel Analyst	60
723	Research and Budget Officer	66
760	Senior Administrative Analyst	56
804	Senior Personnel Analyst	59
863	Storekeeper I	39
866	Storekeeper II	48
941	Warehouseman	35

SECTION 6.4. ENGINEERING AND RELATED TECHNICAL.

Code	Class Title	Salary Range No.
060	Assistant Engineering Technician	42
129	Building Inspector I	50
130	Building Inspector II	53
223	Civil Engineer	66
226	Civil Engineering Assistant	55
229	Civil Engineering Associate	61
262	Construction Inspector	53
321	Draftsman	43
403	Electrical Inspector	50
429	Engineering Aide	37
432	Engineering Technician	47
480	Heating, Ventilating and Air Conditioning Inspector	50
486	Industrial Waste Inspector	50
498	Instrumentman	48
516	Lath and Plaster Inspector	50
639	Plan Checker	55
642	Planning Assistant	46
645	Planning Associate	51
648	Planner	55
651	Planning Director	76
654	Plumbing Inspector	50
679	Principal Engineering Technician	61
691	Principal Planner	66
725	Right-of-Way Agent	56
728	Rodman and Chainman	42
768	Senior Building Inspector	54
776	Senior Construction Inspector	59
780	Senior Draftsman	48
796	Senior Engineering Technician	55
806	Senior Planner	61
890	Superintendent of Buildings	70
893	Supervising Civil Engineering Associate	64
905	Survey Party Chief	55
992	Zoning Administrator	64

SECTION 6.5. ENGINEERING AND RELATED TECHNICAL (continued).

Code	Class Title	Salary Range No.
048	Assistant City Engineer	71
064	Assistant General Manager and Principal Engineer	79
158	Chief Electric Works Engineer	75
174	Chief Water Works Engineer	75
194	City Engineer	77
210	City Traffic Engineer	68
312	Director of Public Works	84

Code	Class Title	Salary Range No.
391	Electrical Engineering	68
396	Electrical Engineering Assistant	56
399	Electrical Engineering Associate	62
419	Electrical Sales Representative	52
468	General Manager and Chief Engineer	700
573	Mechanical Engineer	66
576	Mechanical Engineering Assistant	55
579	Mechanical Engineering Associate	61
683	Principal Mechanical Engineer	72
695	Principal Structural Engineer	72
772	Senior Civil Engineer	70
792	Senior Electrical Engineer	71
824	Senior Water Works Engineer	71
878	Structural Engineer	66
881	Structural Engineering Assistant	55
884	Structural Engineering Associate	61
896	Supervising Electrical Engineering Associate	68
899	Supervising Structural Engineering Associate	67
920	Traffic Engineering Assistant	55
923	Traffic Engineering Associate	61

SECTION 6.6. LABOR, LABOR SUPERVISION AND SKILLED TRADES.

Code	Class Title	Salary Range No.
088	Automotive Body Repairman	45
092	Automotive Equipment Painter	45
104	Automotive Serviceman	35
117	Blacksmith and Welder	45
123	Bookmobile Operator	38
132	Building Repair Foreman	45
138	Building Repairman	42
144	Carpenter	44
150	Cement Worker Finisher	44
271	Custodial Worker I	31
274	Custodial Worker II	35
424	Electrician	47
426	Elevator Operator	27
433	Equipment Mechanic I	45
434	Equipment Mechanic II	47
435	Equipment Operator I	39
438	Equipment Operator II	45
477	Heating and Air Conditioning Repairman	47
487	Inspector	43
564	Machinist	45
567	Maintenance Man	34
570	Maintenance Superintendent, Municipal Buildings	56
571	Mechanic Helper	39
585	Mechanical Repair Helper	38
588	Mechanical Repairman I	42
591	Mechanical Repairman II	47
600	Motor Sweeper Operator	44
603	Painter	44
722	Refuse Collection Foreman	49
736	Sanitation Crewman	36
740	Sanitation Superintendent	66
818	Senior Refuse Foreman	51
829	Shop Foreman	52
830	Shop Superintendent	56
845	Steam Plant Maintenance Supervisor	55
848	Steam Plant Mechanic I	45
851	Steam Plant Mechanic II	49
854	Steam Plant Operation Supervisor	61
857	Steam Plant Operator I	44
860	Steam Plant Operator II	50
935	Truck Operator	40
938	Utility Welder	49
989	Yard Attendant	34

SECTION 6.7. LABOR, LABOR SUPERVISION AND SKILLED TRADES (continued).

Code	Class Title	Salary Range No.
111	Auxiliary Operator	38
582	Mechanical Maintenance and Warehouse Superintendent	61
698	Pumping Plant Operator	40
820	Senior Street Foreman	53
827	Sewer Maintenance Man	39
834	Sign Painter	44
869	Street Foreman	49
872	Street Maintenance Man	38
875	Street Superintendent	66
924	Traffic Painter	40
947	Water Construction Supervisor	58
950	Water Distribution Inspector	43
953	Water Foreman I	47
956	Water Foreman II	53
959	Water Meter Repairman I	39
962	Water Meter Repairman II	45
965	Water Production and Maintenance Supervisor	53
968	Water Production and Storage Foreman	47
971	Water Service and Meter Supervisor	51
974	Water Service Investigator	45
977	Water Superintendent	66
980	Water System Repairman	44
983	Water Utilityman I	40
986	Water Utilityman II	43

SECTION 6.8. LABOR, LABOR SUPERVISION AND SKILLED TRADES (continued).

Code	Class Title	Salary Range No.
018	Appliance Service Foreman	50
021	Appliance Serviceman	45
170	Chief Steam Plant Engineer	68
343	Electric Meters and Services Supervisor	62
347	Electric Overhead Supervisor	63
351	Electric Station Foreman	52
355	Electric Station Operator	40
359	Electric Test Assistant	39
363	Electric Test Foreman	58
367	Electric Test Repairman I	45
371	Electric Test Repairman II	52
375	Electric Underground and and Station Supervisor	63
379	Electric Utilityman I	39
383	Electric Utilityman II	46
387	Electric Utilityman III	49
407	Electrical Mechanical Foreman	57
411	Electrical Mechanical Repairman I	46
415	Electrical Mechanical Repairman II	52
423	Electrical Superintendent	67
492	Instrument and Laboratory Technician I	45
495	Instrument and Laboratory Technican II	50
549	Line Foreman I	55
552	Line Foreman II	58
556	Lineman	52
558	Lineman Helper	39
561	Line Truckman	40
784	Senior Electric Station Foreman	55
788	Senior Electric Station Operator	49
944	Watch Engineer	56

SECTION 6.9. PARKS, RECREATION AND LIBRARIES.

Code	Class Title	Salary Range No.
024	Arts and Crafts Attendant	29
056	Assistant Director of Parks and Recreation	64
072	Assistant to Auditorium Supervisor	37
084	Auditorium Supervisor	42
462	Gardener I	36
465	Gardener II	41
474	Groundskeeper	40
513	Landscape Architect	55
543	Lifeguard I	240
546	Lifeguard II	250
606	Park Foreman	48
609	Park Guard	250
625	Parks Maintenance Supervisor	52
710	Recreation Attendant	200
713	Recreation Leader	32
716	Recreation Supervisor	50
719	Recreation Superintendent	57
816	Senior Recreation Leader	43
911	Swimming Instructor	250
914	Swimming Pool Manager	41
926	Tree Trimmer	42
929	Tree Trimmer Crew Foreman	45
932	Tree Trimmer Foreman	51

SECTION 6.10. PARKS, RECREATION AND LIBRARIES (continued).

Code	Class Title	Salary Range No.
012	Adult Librarian	53
080	Athletic Official	280
126	Branches and Circulation Librarian	53
147	Catalog Librarian	53
166	Chief Librarian	72
178	Children's Librarian	53
268	Cultural Arts Librarian	53
309	Director of Parks and Recreatiton	72
318	Display Artist	44
441	Exhibits Coordinator	46
525	Librarian I	46
528	Librarian II	50
531	Library Monitor	260
534	Library Page	16
836	Special Activity Leader	37
887	Student Librarian	220

SECTION 6.11. COMMUNICATIONS, PUBLIC SAFETY, LEGAL AND PUBLIC HEALTH.

Code	Class Title	Salary Range No.
015	Animal Control Officer	40
114	Battalion Chief	64
259	Communications Operator	35
302	Deputy Fire Chief	69
443	Fire Alarm Technician I	44
444	Fire Alarm Technician II	50
447	Fire Captain	59
450	Fire Chief	77
453	Fire Engineer	54
459	Fireman	50
483	Identification Technician	47
701	Radio Engineer	54
704	Radio Technician	45
764	Senior Animal Control Officer	42
812	Senior Radio Technician	48
842	Special Officer	220
902	Supervisor of Records and Identification	54
917	Switchboard Operator	30

SECTION 6.12. COMMUNICATIONS, PUBLIC SAFETY, LEGAL AND PUBLIC HEALTH (continued).

Code	Class Title	Salary Range No.
036	Assistant City Attorney	66
182	City Attorney	85
202	City Nurse	42
206	City Physician	400
217	Civil Defense Coordinator	61
282	Deputy City Attorney	60
306	Deputy Police Chief	69
489	Instructor—Civil Defense	270
501	Jailer I	44
504	Jailer II	47
519	Law Clerk	37
615	Parking Checker	38
657	Police Captain	65
660	Police Chief	77
663	Police Detective	54
666	Police Lieutenant	61
669	Policeman	51
672	Police Sergeant	57
675	Policewoman	51
731	Safety and Training Officer	59
732	Safety Inspector	47
766	Senior Assistant City Attorney	74

SECTION 7. INCUMBENTS RECEIVING IN EXCESS OF MAXIMUM.

Any person who at the time of the effective date of this ordinance was receiving compensation in excess of the maximum rate for the position held by him shall continue to receive such higher compensation; provided, however, that the rate of compensation of a person permanently transferred or reduced to a classification with a lower salary range shall be fixed as provided in Chapter 4 of the Glendale Muincipal Code, 1964.

SECTION 8. REDUCTION OR SUSPENSION OF COMPENSATION.

Nothing contained in this ordinance shall be construed as prohibiting the reduction of or the suspension of payment of compensation to any person when such reduction or suspension is authorized by the provisions of Article XXIV of The Charter of the City of Glendale or the Rules of the Civil Service Commission adopted pursuant thereto.

SECTION 9. POLICE DIVISION—FIREARMS TRAINING AND ADDITIONAL COMPENSATON FOR MARKSMANSHIP.

Employees of the Police Division who may be called upon to use firearms in the performance of the duties to which they are or may be assigned shall:

(a) As directed by the Police Chief fire the prescribed combat or target course once a month for a minimum of ten months per fiscal year. Any employee failing to fire as herein required may be fined one day's pay upon the recommendation of the Police Chief and approval of the City Manager. In addition to the required number of courses the Police Chief may require a minimum point qualification for both combat and target courses which he deems necessary to insure proficiency of such employees and may require any such employee who within the past year has not attained the minimum point qualification to take additional firearms training. This section does not restrict personnel action by the Police Chief.

(b) Receive additional compensation each month for marksmanship as herein provided. Such additional compensation shall be in the following amounts and based upon the following scale of proficiency as demonstrated upon the approved

firearms target type course:

Marksman,
$2.00 per month, 300 to 339

Sharpshooter,
$4.00 per month, 340 to 369

Expert,
$6.00 per month, 370 to 384

Master,
$8.00 per month, 385 to 400

An employee shall receive the additional compensation only for the 12-month period immediately following his demonstration of proficiency as herein provided to the satisfaction of the Police Chief and the certification of such proficiency to the City Controller. The City Manager shall determine the firearms course. The determination of the Police Chief on all scoring is final and conclusive.

SECTION 10. PUBLIC SERVICE DIVISION—SIX-DAY FORTY-HOUR WEEK—EXTRA PAY FOR UNUSUAL HOURS.

(a) Employees in the Public Service Division who regularly work a six-day forty-hour week shall receive ten dollars ($10.00) per month additional compensation.

(b) Employees in the Public Service Division who are assigned to work a shift which commences at or after 2:00 p.m. and before 9:00 p.m. shall receive twelve cents ($.12) per hour extra for each hour worked on said shift.

(c) Employees in the Public Service Division who are assigned to work a shift which commences at or after 9:00 p.m. and before 4:00 a.m. of the next following day shall receive sixteen cents ($.16) per hour extra for each hour worked on said shift.

(d) Employees in the Public Service Division receiving compensation for overtime as provided in Section 4-57 of the Glendale Municipal Code, 1964, shall not be entitled to receive the extra compensation provided under subsections (b) and (c) of this section.

SECTION 11. POLICE DIVISION—HAZARD PAY FOR MOTORCYCLE DUTY.

Employees of the Police Division who are "safety members" shall receive additional compensation as hazard pay in the sum of seventy dollars ($70.00) per month when assigned to a two-wheel motorcycle.

SECTION 12. PUBLIC SAFETY UNIFORM ALLOWANCES.

(a) Employees of the Police Division who are "safety members," "safety members of the Bureau of Fire Prevention and the Captain in charge of training in the Fire Division," shall receive a uniform allowance in the sum of one hundred dollars ($100.00) per year; provided, however, that employees of the Police Division who are Jailers, Parking Checkers, Identification Technicians, or a Supervisor of Records and Identification shall receive a uniform allowance in the sum of fifty dollars ($50.00) per year. Said uniform allowance shall be paid in two equal installments, on the first day of July and the first day of January of each year. New policemen and policewomen shall, in addition to the above, receive a two hundred dollar ($200.00) uniform allowance to be paid half on entering service and half on successfully completing "academy" training.

(b) Employees of the Fire Division who are "safety members" shall receive a uniform allowance in the sum of fifty dollars ($50.00) per year, which shall be paid in two equal installments, on the first day of July and the first day of January of each year.

SECTION 13. POLICE DIVISION—EXTRA PAY FOR CLERKS I, II AND III, CLERK-TYPISTS I AND II, AND CLERK-STENOGRAPHERS FOR UNUSUAL HOURS.

Full-time employees in the classification of Clerks I, II and III, Clerk-Typists I and II, and Clerk-Stenographers occupying positions in the Police Division in which the incumbents are required to work a minimum of three-fourths of a shift between the periods of 4:00 p.m. and 7:00 a.m. shall receive additional pay in an equal amount to two salary ranges as used in Section 4 of this ordinance.

SECTION 14. POLICE DIVISION—EXTRA PAY FOR WOMEN ASSISTING JAILER.

Women, except Policewomen, in the Police Division shall receive additional pay in the amount of two dollars ($2.00) per work shift when assigned to assist the Jailer with women prisoners.

SECTION 15. ANIMAL CONTROL OFFICERS UNIFORM ALLOWANCE.

Employees who are Animal Control Officers shall receive a uniform allowance in the sum of one hundred dollars ($100.00) per year payable in two equal installments, on the first day of July and first day of January of each year.

SECTION 16. PUBLIC WORKS DIVISION — FORTY-SIX-HOUR WEEK FOR PARKING ATTENDANTS.

Parking Attendants I and II in the Public Works Division who work a forty-six-hour week shall receive compensation at the rate in effect for the fifth salary range above their regular salary step.

SECTION 17. EXTRA COMPENSATION FOR BRUSH REMOVAL WORK.

Full-time employees in the classifications of Tree Trimming Crew Foreman, Tree Trimmer, Street Maintenance Man, and Maintenance Man occupying positions in the Street Section of the Public Works Division who are assigned to the brush removal crew shall receive additional pay in an amount equal to two salary ranges as used in Section 4 of this ordinance, which additional amount shall be paid only during those periods when such employees are actually engaged in brush clearance work.

SECTION 18. GROUP INSURANCE BENEFITS.

The benefits of group health, medical and accident insurance shall be provided to all City officers except members of The Council and to all City employees compensated on a monthly basis and for certain dependents of such persons. Said insurance benefits shall be provided solely by contracts of insurance approved by The Council and purchased by the City from time to time. The City shall pay the cost of such insurance in the sum of eight dollars and seventy-seven cents

($8.77) per month for each such officer and employee, and further, shall pay to said contracting insurer the sum of six dollars and sixty-nine cents ($6.69) per month for employees with one dependent and eight dollars and fifty cents ($8.50) per month for employees with more than one dependent to apply on the premium for the dependent or dependents of each officer or employee who desires such insurance coverage for said dependents and arranges to pay the remainder of the premium due on account of his said dependent or dependents. In no event will such payment be made directly by the City to any officer or employee or the dependent thereof. For the purposes of this section, the term dependents shall mean and include the spouse and minor children of said employed persons.

The City shall not pay the cost of such insurance or any part thereof for any officer or employee who is absent on leave without pay for any entire calendar month, nor shall the City pay such cost for any officer or employee who is on military leave without pay for more than thirty (30) days.

Notwithstanding the foregoing provisions of this section, the City shall pay the cost of such insurance in the sum of five dollars and thirty-three cents ($5.33) for those officers and employees who are eligible for Medicare under Title XVIII of the United States Social Security Act and therefore are within the Modified and Supplementary group insurance coverage, except that the City shall not pay such cost of insurance for any person who is absent on leave without pay for any entire calendar month.

SECTION 19. REPEALING CLAUSE.

Ordinance No. 3873 as amended is repealed and each of the ordinances amending said ordinance are also repealed.

SECTION 20. PROVISIONS SIMILAR TO PRIOR SALARY ORDINANCE — CONSTRUCTION.

The provisions of this ordinance so far as they are substantially the same as the provisions of the former salary ordinance, Ordinance No. 3873 as amended, must be construed as continuations thereof and not as original enactments.

SECTION 21. SEVERABILITY OF PARTS OF ORDINANCE.

It is hereby declared to be the intention of The Council that the sections, paragraphs, lines, sentences, clauses and phrases of this ordinance are severable, and if any phrase, clause, sentence, line, paragraph or section of this ordinance shall be declared unconstitutional by the valid judgment or decree of a court of competent jurisdiction such unconstitutionality shall not affect any of the remaining phrases, clauses, phrases, sentences, lines, paragraphs and sections of this ordinance.

SECTION 22. EFFECTIVE DATE.

This ordinance shall take effect and be in force on the 1st day of July, 1970.

Passed by The Council of the City of Glendale on the 30th day June, 1970.

JAMES W. PERKINS, D.D.S.
Mayor

ATTEST:
JOHN H. WALTERS
City Clerk

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES (ss)
CITY OF GLENDALE

I, JOHN H. WALTERS, City Clerk of the City of Glendale, certify that the foregoing ordinance was passed by The Council of the City of Glendale, California, at a regular meeting held on the 30th day of June, 1970, and that the same was passed by the following vote:

Ayes: Allen, Haverkamp, Peters, Watson, Perkins.
Noes: None.
Absent: None.

JOHN H. WALTERS,
City Clerk

July 6, 1970.

APPENDIX B

SUPREME COURT
FILED
OCT 3 1975
G. E. BISHEL, Clerk

Deputy

C O P Y

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

IN BANK

GLENDALE CITY EMPLOYEES ASSOCIATION, INC., et al., Plaintiffs and Appellants, v. CITY OF GLENDALE et al., Defendants and Appellants.	L.A. 30357 Super. Ct. No. 988 944

With the enactment of the George Brown Act (Stats. 1961, ch. 1964) in 1961, California became one of the first states to recognize the right of government employees to organize collectively and to confer with management as to the terms and conditions of their employment. Proceeding beyond that act the Meyers-Milias-Brown Act (Stats. 1968, ch. 1390) authorized labor and management representatives not only to confer but to enter into written agreements for presentation to the governing body of a municipal government or other local agency.[1/] The present case raises among

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1/ The Meyers-Milias-Brown Act (Gov. Code,

SEE CONCURRING AND DISSENTING OPINION

other issues which we shall discuss the fundamental question unanswered by the literal text of these statutes: whether an agreement entered into under the Meyers-Milias-Brown Act, once approved by the governing board of the local entities, binds the public employer and the public employee organization. We conclude that the Legislature intended that such an understanding, once ratified, is indeed binding upon the parties.

1. Statement of facts.

Pursuant to the Meyers-Milias-Brown Act, negotiators for plaintiff Glendale City Employees' Association, Inc., the designated representative for the city employees, met with Charles Briley, the assistant city manager, to discuss employee salaries for the 1970-1971 fiscal year. The parties negotiated a memorandum of understanding, which they presented to the

§§ 3500-3510) applies to employees of municipalities and most other local governmental agencies. Employees of school districts, however, fall under the Winton Act (Ed. Code, §§ 13080-13090) and employees of some transit districts come within the scope of special legislation governing those districts (see, e.g., Pub. Util. Code, §§ 25051-25057). The George Brown Act, now renumbered as Government Code sections 3525-3526, still governs relations between the state and its employees.

city council. On June 9, 1970, the council passed a motion approving the memorandum. The memorandum of understanding provides for a cost of living adjustment, sick leave, incentive pay, and a salary survey; the only matter that remains at issue is the survey provision.[2/]

The survey provision reads as follows: "The parties hereto will conduct a joint salary survey and using as guide lines data secured from the following jurisdictions, Burbank, Pasadena, Santa Monica, Long Beach, Anaheim, Santa Ana, Los Angeles City and Los Angeles County. The intent of the survey will be to

2/ The parties also dispute the meaning of language in the preamble to the memorandum respecting the effective date of the understanding. The disputed language states that "The items in this agreement are subject to the approval of the City Manager and the City Council of the City of Glendale, and will be placed into effect upon the taking of administrative action by the City Manager's Office and the adoption of the necessary ordinances and resolutions by the City Council if acceptable to them, in accordance with the terms and conditions hereinafter set forth." Plaintiffs maintained that the understanding became effective upon the council's adoption of a resolution approving the memorandum; defendants argue that it does not take effect until the council adopted ordinances implementing its terms.

Since the city did adopt a salary ordinance with the intent of implementing the memorandum, even under defendants' interpretation the agreement has gone into effect.

place Glendale salaries in an above average position with reference to the jurisdictions compared with proper consideration given to internal alignments and traditional relationships. The data used will be that data available to us and intended for use in fiscal year 1970-71. Adjustments which it is agreed shall be made will have an effective date of October 1, 1970. It is intended that comparisons will be made on a classification basis and not title only, and that the classifications shall be determined by professional judgment of the highest qualified personnel people with whom we would confer in the jurisdictions with which we will compare." (Emphasis added.)

The city conducted the survey. Consistent with past practice, the city organized the data by preparing bar graphs comparing Glendale salaries with the surveyed jurisdiction. Although the graphs show the entire salary range for each job classification, the parties are primarily concerned with the salaries paid employees in the top (5th or E) step of each salary range since a majority of Glendale employees are at that level.

By viewing the bar graphs, the city manager could obtain a rough idea of how Glendale salaries at

each step compared with salaries paid in surveyed jurisdictions. On this basis the city manager, in September of 1970, prepared a draft salary ordinance. Plaintiff association, using the survey data, computed the arithmetic average of salaries from the surveyed jurisdictions for the top step of each job classification, and discovered that in many instances the salary proposed in the draft ordinance was below this average. Over the objection of the association the city council, on October 1, 1970, enacted the ordinance (Salary Ordinance No. 3936) recommended by the city manager.

On behalf of the class of city employees, plaintiff association and certain of its members filed the instant suit against the City of Glendale and its councilmen. Upholding the binding nature of the memorandum of understanding, the trial court admitted parol testimony of the negotiators to aid in the interpretation of its provisions. On the basis of that testimony, the court concluded that the city must compute the arithmetic (mean) average of the salaries paid employees in the highest step of each comparable classification in the surveyed jurisdictions, and must pay Glendale employees in the fifth step of each classification a salary equal to the average from the surveyed

jurisdiction, plus one cent. Salaries of workers in the lower steps would be determined by the existing ratio of such salaries to step E salaries, thus preserving "internal alignments" as required by the memorandum.3/

The court concluded that Salary Ordinance No. 3936 did not meet these criteria, and that the failure of the city to pay salaries in excess of the arithmetic average of surveyed jurisdictions constituted an abuse of discretion and a breach both of the memorandum of understanding and of the city's duty under the Meyers-Milias-Brown Act. Finally, the court concluded that since plaintiffs had no adequate remedy at law, mandamus should issue to compel defendants to compute and pay

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3/ The trial court also found: (a) that salary data from Los Angeles City and Los Angeles County should be included in computing the average salary, not merely utilized as "reference points" as the city claimed; (b) that the term "traditional relationships" referred to the historical relationship between salaries paid certain Glendale employees and the salaries paid employees of other jurisdictions holding comparable positions; (c) that the term "internal alignments" referred to salary relationships between Glendale employees at different salary steps and classes; (d) that the proviso requiring "proper consideration" for traditional relationships and internal alignments did not authorize the city to rely on such factors to justify payment of below-average salaries.

compensation to city employees in accord with the formula set out in the court's findings and conclusions. The court directed that 25 percent of all retroactive salaries and wages recovered should be payable to plaintiffs' counsel as attorneys' fees.

Defendants appealed. They contend that the memorandum of understanding was not binding, that the trial court erred in its interpretation of the memorandum, and that in any event the memorandum cannot be enforced by writ of mandamus. Defendants also argue that the present suit is not a proper class action, and that relief is barred by plaintiff's failure to exhaust administrative remedies. Plaintiffs filed a cross-appeal which raises a single limited issue; plaintiffs maintain that whenever an employee's salary must be increased to bring it into line with the survey, it should be increased not only to a figure one cent above average, but to a figure lying on a higher salary range.

2. The memorandum of understanding, once approved by the city council, is binding upon the parties.

The Meyers-Milias-Brown Act, as set forth in Government Code section 3505.1, provides that after negotiations "If agreement is reached by the representatives of the public agency and a recognized employee

organization . . . they shall jointly prepare a written memorandum of such understanding, which shall not be binding, and present it to the governing body or its statutory representative for determination."[4] As we shall explain once the governmental body votes to accept the memorandum, it becomes a binding agreement.

The historical progression in the legislative enactments began with the George Brown Act.[5]

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[4] Section 3500 of the Meyers-Milias-Brown Act does not clearly prescribe whether a local agency may adopt methods of administering employer-employee relations which differ from those prescribed by the act. (See discussion in Grodin, Public Employee Bargaining in California: The Meyers-Milias-Brown Act in the Courts (1972) 23 Hastings L.J. 719, 723-725; Grodin, California Public Employee Bargaining Revisited: The MMB Act in the Appellate Courts (1974) California Public Employee Relations No. 21, p. 2.) We need not reach that question here, for Glendale has adopted a format for labor-management relations essentially identical to that set out in the Meyers-Milias-Brown Act. The city's employee relation ordinance states that employee organizations shall present written proposals on salaries, fringe benefits, and other conditions of employment to the city manager. It then provides in language parallel to Government Code section 3505.1, that "If agreement is reached by the City Manager and the recognized employee representative, they shall jointly prepare a written memorandum of such understanding, which shall not be binding, and present it to The Council by May 1 of each year." (Ordinance No. 3830, § 11.)

[5] The George Brown Act originally appeared as Government Code sections 3500-3509. The legislative revisions of 1968 and 1971 reserved those sections for the Meyers-Milias-Brown Act, and reenacted the George Brown Act, now limited to the relationship between the

That act sought in general to promote "the improvement of personnel management and employer-employee relations . . . through the establishment of uniform and orderly methods of communication between employees and the public agencies by which they are employed." (Stats. 1961, ch. 1464, p. 4141.) It provided, in former section 3505, that "The governing body of a public agency [or its representatives] shall meet and confer with representatives of employee organizations upon request, and shall consider as fully as it deems reasonable such presentations as are made by the employee organization on behalf of its members prior to arriving at a determination of policy or course of action." (Stats. 1961, ch. 1964, p. 4142.)[6]

During the years following enactment of the George Brown Act public employee unions continued to grow in size[7] and to press their claims that public

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state government and state employees, as Government Code sections 3525-3536.

[6] This provision, reenacted as Government Code section 3530, still governs the relationship between the state and state employees organizations.

[7] See East Bay Mun. Employees Union v. County of Alameda (1970) 3 Cal.App.3d 578, 583, footnote 7; Edwards, The Emerging Duty to Bargain in the Public Sector (1973) 71 Mich.L.Rev. 885, 886; Werne,

employees should enjoy the same bargaining rights as private employees so long as such rights did not conflict with the public service.[8] The George Brown Act, originally a pioneering piece of legislation, provided only that management representatives should listen to and discuss the demands of the unions. Apparently the failure of that act to resolve the continual controversy between the growing public employees' organizations and their employers led to further legislative inquiry. Moreover, subsequent enactments of other states, which granted public employees far more extensive bargaining rights,[9] further exposed the limitations of the George Brown Act.

Cognizant of this turn of events the Legislature in 1968 enacted the Meyers-Milias-Brown Act.[10] Expressly intending the new law to strengthen employer-

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Collective Bargaining in the Public Sector (1969) 22 Vand.L.Rev. 833.

8/ Anderson, The Impact of Public Sector Bargaining (1973) Wis. L.Rev. 986, 988.

9/ See authorities cited footnote 4, supra.

10/ See California Senate Select Committee on Local Public Safety Employment Practice, To Meet and Confer: A Study of Public Employee Labor Relations (1972) pages 25-26.

employee communication, the Legislature provided for "a reasonable method of resolving disputes regarding wages, hours, and other terms and conditions of employment." (Gov. Code, § 3500.) The public agency must not only listen to presentations, but "meet and confer in good faith" (Gov. Code, § 3505), a phrase statutorily defined to include a free exchange of information, opinions and proposals, with the objective of reaching "agreement on matters within the scope of representation prior to the adoption by the public agency of its final budget for the ensuing year." (Ibid.) Section 3505.1, quoted earlier, provides that if agreement is reached it should be reduced to writing and presented to the governing body of the agency for determination. This statutory structure necessarily implies that an agreement, once approved by the agency, will be binding. The very alternative prescribed by the statute -- that the memorandum "shall not be binding" except upon presentation "to the governing body or its statutory representative for determination," -- manifests that favorable "determination" engenders a binding agreement.

Why negotiate an agreement if either party can disregard its provisions? What point would there

be in reducing it to writing, if the terms of the contract were of no legal consequence? Why submit the agreement to the governing body for determination, if its approval were without significance? What integrity would be left in government if government itself could attack the integrity of its own agreement? The procedure established by the act would be meaningless if the end-product, a labor-management agreement ratified by the governing body of the agency, were a document that was itself meaningless.

The Legislature designed the act, moreover, for the purpose of resolving labor disputes. (See Gov. Code, § 3500.) But a statute which encouraged the negotiation of agreements, yet permitted the parties to retract their concessions and repudiate their promises whenever they choose, would impede effective bargaining. Any concession by a party from a previously held position would be disastrous to that party if the mutual agreement thereby achieved could be repudiated by the opposing party. Successful bargaining rests upon the sanctity and legal viability of the given word.

In applying the Meyers-Milias-Brown Act, "the courts have uniformly held that a memorandum of understanding, once adopted by the governing body of a public

agency, becomes a binding agreement." (Grodin, Public Employee Bargaining in California: The Meyers-Milias-Brown Act in the Courts (1972) 23 Hastings L.J. 719, 756.)[11] The leading decision, however, is one which although decided in 1970 arose under the earlier George Brown Act, East Bay Mun. Employees Union v. County of Alameda, supra, 3 Cal.App.3d 578. Settling a strike by county hospital employees, Alameda County agreed to

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11/ Professor Grodin's article, published in March 1972, cites only superior court decisions in support of his position, but subsequent to that publication two Court of Appeal decisions have also enforced agreements reached under the Meyers-Milias-Brown Act. (San Joaquin County Employees' Assn., Inc. v. County of San Joaquin (1974) 39 Cal.App.3d 83, 88-89; Wilson v. San Francisco Mun. Ry. (1973) 29 Cal.App.3d 870.) These decisions, as well as the Court of Appeal opinion in the instant case, are analyzed in a second article by Professor Grodin, California Public Employees Bargaining Revisited: The MMB Act in the Appellate Courts (1974) California Public Employee Relations No. 21, page 2.

Professor Edwards of the University of Michigan Law School summarized the decisions of other states: "It is increasingly apparent in the developing case law that once a contract has been signed, the public employer must, in effect 'adopt' the contract and do everything reasonably within its power to see that it is carried out." (Edwards, The Emerging Duty to Bargain in the Public Sector (1973) 71 Mich.L.Rev. 885, 929.) The phrase "everything reasonably within its power" refers to the problems, discussed by Edwards, which may arise when a public agency agrees to a contract but must depend on appropriations from another agency to carry out that contract. Since the Glendale City Council has authority to appropriate sums needed to pay the salary increase it agreed to pay, those problems do not arise in the present case.

reinstate the strikers without loss of any benefits previously earned by those employees. Upon reinstatement, however, the county classified the strikers as new employees, with resultant loss of seniority, vacation, sick leave, retirement and other benefits.

Reversing a trial court ruling which declined to enforce the agreement, the Court of Appeal through Justice Wakefield Taylor stated that the George Brown Act "required the public agency to meet and confer and listen. . . . [T]he modern view of statutory provisions similar to the Brown Act is that when a public employer engages in such meetings with the representatives of the public employee organization, any agreement that the public agency is authorized to make and, in fact, does enter into, should be held valid and binding as to all parties." (3 Cal.App.3d 578, 584.) If, under the more limited provisions of the George Brown Act, which does not specifically refer to an "agreement reached by the representatives of the public agency and a recognized employer organization," nevertheless the negotiation and agreement by such parties are "valid and binding," we conclude a fortiori that the memorandum of understanding reached under the broader Meyers-Milias-Brown Act is indubitably binding.

3. The city has failed to comply with the terms of the memorandum of understanding.

Defendants challenge the trial court's finding that the city did not comply with the terms of the agreement. We have pointed out that the trial judge found the agreement uncertain in meaning and admitted parol evidence to aid in its construction. Defendants do not contend that the evidence received was inadmissible under the parol evidence rule,[12/] nor that the evidence so admitted does not support the findings and conclusions of the trial court. Instead, the defendants argue first, that the city singularly enjoys a unilateral right to insist upon any reasonable interpretation of the agreement that it chooses, and second, that the agreement can properly be interpreted to require only the taking of a salary survey, leaving the fixing of salary ranges to later administrative determination.

12/ See Pacific Gas & E. Co. v. G.W. Thomas Drayage etc. Co. (1968) 69 Cal.2d 33, 40; Tahoe National Bank v. Phillips (1971) 4 Cal.3d 11, 22-23; Jones, Evidentiary Concepts in Labor Arbitration: Some Modern Variations on Ancient Legal Themes (1969) 13 U.C.L.A.L. Rev. 1241, 1263-1269 fully discusses the effect of the parol evidence rule on the interpretation of collective bargaining agreements.

The city's claim to a unilateral right to interpret the memorandum rests upon numerous cases holding that a city wage ordinance will not be held to conflict with charter provisions requiring payment of prevailing wages unless the city's action is "so palpably unreasonable and arbitrary as to indicate an abuse of discretion as a matter of law." (Sanders v. City of Los Angeles (1970) 3 Cal.3d 252, 261; Walker v. County of Los Angeles (1961) 55 Cal.2d 626, 639; City & County of San Francisco v. Boyd (1943) 22 Cal. 2d 685, 690.)[13/] The city seeks to apply this doctrine to the present case; it argues that in enacting Salary Ordinance No. 3936 it attempted to comply with its duty under the memorandum, and that this ordinance cannot be set aside unless it is fraudulent or palpably unreasonable.

This argument, however, misses the point; the issue here is not the validity of Ordinance No. 3936, but the sufficiency of that ordinance to fulfill

13/ See also Alameda County Employees Assn. v. City of Alameda (1973) 30 Cal.App.3d 518, 532; Sanders v. City of Los Angeles (1967) 252 Cal.App.2d 488, 490; Anderson v. Board of Supervisors (1964) 229 Cal. App.2d 796, 798-800; San Bernardino Fire & Police Protective League v. City of San Bernardino (1962) 199 Cal.App.2d 401, 408.

the city's duty under the memorandum. Although the cited cases recognize the broad discretion of a city in interpreting its respective charter's prevailing wage provisions, and although defendant city here would analogize the instant issue with such a prevailing wage case, defendant's position founders on the rock of the bilateral nature of the instant memorandum of understanding. We do not probe the city's interpretation and application of a prevailing wage ordinance or even an alleged abuse of discretion by the city in so applying it; we deal here with a mutually agreed covenant, a labor management contract. We know of no case that holds that one party can impose his own interpretation upon a two-party labor-management contract.

In pre-Wagner Act days some courts considered collective bargaining agreements to be merely statements of intention or unilateral memoranda. (See Chamberlain, Collective Bargaining and the Concept of Contract (1948) 48 Colum.L.Rev. 829, 832; Annot. (1935) 95 A.L.R. 10, 34-37.) But all modern California decisions treat labor-management agreements whether in

public employment[14] or private[15] as enforceable contracts (see Lab. Code, § 1126) which should be interpreted to execute the mutual intent and purpose of the parties.[16]

This principle applies as much to agreements between government employees and their employers as to

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14/ See East Bay Mun. Employees Union v. County of Alameda, supra, 3 Cal.App.3d 578, 584; San Joaquin County Employees' Assn., Inc. v. County of San Joaquin, supra, 39 Cal.App.3d 83, 88-89.

15/ See Posner v. Grunwald-Marx, Inc. (1961) 56 Cal.2d 169, 177; McCarroll v. L.A. County etc. Carpenters (1957) 49 Cal.2d 45, 66-67; Holayter v. Smith (1972) 29 Cal.App.3d 326, 333-334; San Diego etc. Carpenters v. Wood, Wire, etc. Union (1969) 274 Cal.App. 2d 683, 689; Div. Labor L. Enf. v. Ryan Aero Co. (1951) 106 Cal.App.2d Supp. 833.

16/ Civil Code section 1636 declares that "A contract must be so interpreted as to give effect to the mutual intention of the parties as it existed at the time of contracting, so far as the same is ascertainable and lawful." This section was applied to the interpretation of private collective bargaining agreements in General Precision, Inc. v. International Association of Machinists (1966) 241 Cal.App.2d 744, 746-747 and McKay v. Coca-Cola Bottling Co. (1952) 110 Cal. App.2d 672, 676.

In Posner v. Grunwald-Marx, Inc. (1961) 56 Cal.2d 169, 177, we observed that a collective bargaining agreement "is more than a contract; it is a generalized code to govern a myriad of cases which the draftsman cannot wholly anticipate. . . . It calls into being a new common law -- the common law of the particular industry." (56 Cal.2d 169, 177, quoting United Steelworkers v. Warrior & Gulf Navigation Co. (1960) 363 U.S. 574, 578-579.)

private collective bargaining agreements.[17] Agreements reached under the Meyers-Milias-Brown Act, like their private counterparts, are the product of negotiation and concession; they can serve as effective instruments for the promotion of good labor-management relations only if interpreted and performed in a manner consistent with the objectives and expectations of the parties.

The city raises many other objections to the trial court's interpretation of the agreement: it contends that the memorandum gave the council discretion to choose whether to implement the survey findings; that the memorandum is but an agreement to agree in the future concerning new salary ranges; that the term "average salaries" in the memorandum does not mean an arithmetic average but refers to the city's practice of using bar graphs to visualize an average salary level; that the phrase "proper consideration [for] internal

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17/ Courts have frequently drawn upon precedents involving private labor-management relations to aid in determining the rights of public employees and employee organizations. (See, e.g., Firefighters Union v. City of Vallejo (1974) 12 Cal.3d 608, 617; Social Workers' Union, Local 535 v. Alameda County Welfare Dept. (1974) 11 Cal.3d 382, 341; San Joaquin County Employees' Assn., Inc. v. County of San Joaquin, supra, 39 Cal.App.3d 83, 86.

alignments and traditional relationships" in the memorandum authorizes the city to use such alignments and relationships to justify payment of below average salaries.

All the above contentions violate the established rule that if the construction of a document turns on the resolution of conflicting extrinsic evidence, the trial court's interpretation will be followed if supported by substantial evidence. (See 6 Witkin, Cal. Procedure (2d ed. 1971) pp. 4248-4249 and cases there cited.) In light of this rule, defendants, in order to overturn the trial court's interpretation, must demonstrate either that the extrinsic evidence on which the court relied conflicts with any interpretation to which the instrument is reasonably susceptible (Pacific Gas & E. Co. v. G. W. Thomas Drayage etc. Co., supra, 69 Cal.2d 33, 40) or that such evidence does not provide substantial support for the court's interpretation. But defendants present neither contention. Their arguments, based upon an interpretation of the memorandum on its face without reference to the extrinsic evidence or the trial court's findings, pose no issue cognizable within the scope of our appellate review.

4. Plaintiff union may maintain this action on behalf of the Glendale city employees; allegations that this suit is a class action are superfluous and do not affect the validity of the judgment.

Plaintiffs' complaint alleges, and the court found, that plaintiffs filed suit on behalf of the class of city employees. Defendants argue that plaintiffs failed to provide adequate notice to the members of the class;[18] plaintiffs respond that defendants first raised this issue on appeal. Plaintiffs' class allegations, however, are superfluous; plaintiff association, as the recognized representative of city employees, may sue in its own name to enforce the memorandum of understanding. (See Professional Fire Fighters, Inc. v. City of Los Angeles (1963) 60 Cal.2d 276, 283-284.) Since the class action format adds nothing to the rights or liabilities of the parties,[19]

18/ The record indicates only that plaintiff union posted notice of the action on various bulletin boards. After the court found in favor of plaintiffs, the union posted a second notice advising employees that their counsel would request an award of attorneys' fees, and the manner in which employees could appear in order to be heard in opposition to that award.

19/ It is not necessary to find this suit a proper class action in order to uphold the portion of the judgment awarding counsel for plaintiffs 25 percent of all retroactive salaries and wages received. That award may be sustained under the rule that a lit-

the issue of notice to the members of the class is immaterial.

The instant case in this respect closely resembles Daniels v. Sanitarium Assn., Inc. (1963) 59 Cal.2d 602, in which we first confirmed the right of a union to sue as a legal entity. In Daniels, the union vice-president sued as a "representative" of the union; we held that the suit should have been filed by the union directly. We stated, however, that "we do not believe the form in which the action is brought should be crucial. Here Daniels sued 'in a representative capacity for and on behalf of' the union. . . . But the union, as we have pointed out, may sue as an entity for the wrong done to itself; such an action is not a class action but a direct one by the union. Hence the better and simplest form of procedure would be the suit in the name of the union as such. Since the matter is procedural only, however, we have considered, and sus-

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[illegible] grant who creates a fund in which others enjoy beneficial rights may require those beneficiaries to pay their fair share of the expense of litigation. (See Sprague v. Ticonic Nat'l Bank (1939) 307 U.S. 161; Estate of Stauffer (1959) 53 Cal.2d [illegible], 132; Estate of Keade (1966) 64 Cal.2d 809, [illegible]; Winslow v. Harold G. Ferguson Corp. (1944) 25 Cal.2d [illegible], 277; Farmers etc. Nat. Bank v. Peterson (1[illegible]) 5 Cal.2d 601, 607; Dawson, Lawyers and Involuntary Clients: Attorneys Fees From Funds (1974) 87 Harv.L.Rev. 1597.)

tained, the instant complaint as one brought by the union as an entity." (59 Cal.2d at pp. 608-609.)

In accord with Daniels, we conclude that the unnecessary allegations and findings that the suit is a class action do not detract from the merits of plaintiff association's suit as the recognized representative of the city employees. "Superfluidity does not vitiate." (Civ. Code, § 3537.)

5. Plaintiffs' action is not barred for failure to exhaust administrative remedies.

Defendants contend that this suit is barred by plaintiffs' failure to exhaust administrative remedies. Defendants refer to the grievance procedure established by Ordinance No. 3830, enacted in 1968. Section 9 of this ordinance provides that an aggrieved employee, whose dispute relates to "the interpretation or application of this Ordinance, an ordinance resulting from a memorandum of understanding, or of rules or regulations governing personnel practices or working conditions" should first consult informally with his supervisor. If that consultation does not resolve the dispute, the employee may file a grievance form with the supervisor, who must enter his decision and reasons and return the form to the employee. If dissatisfied

with the supervisor's response, the employee may forward the form to the division head; if dissatisfied with the division head's response, he may forward the form to the city manager, whose decision is final. Plaintiffs did not follow this procedure before instituting the present action.

The requirement of exhaustion of administrative remedies does not apply if the remedy is inadequate. (Ogo Associates v. City of Torrance (1974) 37 Cal.App.3d 830, 834; Diaz v. Quitoriano (1969) 268 Cal. App.2d 807, 812; Comment, Exhaustion of Administrative Remedies in California (1968) 56 Cal.L.Rev. 1061, 1079-1080.) The city's grievance procedure is inadequate to the resolution of the present controversy in two respects.

First, the pertinent portion of Ordinance No. 3830 provides only for settlement of disputes relating to the "interpretation or application of . . . an ordinance resulting from a memorandum of understanding." (Emphasis added.) The crucial threshold issue in the present controversy -- whether the ratified memorandum of understanding itself is binding upon the parties -- does not involve an "ordinance" and hence does not fall within the scope of grievance resolution.

Second, the city's procedure is tailored for the settlement of minor individual grievances. A procedure which provides merely for the submission of a grievance form, without the taking of testimony, the submission of legal briefs, or resolution by an impartial finder of fact is manifestly inadequate to handle disputes of the crucial and complex nature of the instant case, which turns on the effect of the underlying memorandum of understanding itself. (Cf. Martino v. Concord Community Hosp. Dist. (1965) 233 Cal.App.2d 51, 57.)

b. Mandamus lies to enforce the memorandum of understanding.

The usual remedy for failure of an employer to pay wages owing to an employee is an action for breach of contract; if that remedy is adequate, mandate will not lie. (See Elevator Operators etc. Union v. Newman (1947) 30 Cal.2d 799, 808 and cases there cited.) But often the payment of the wages of a public employee requires certain preliminary steps by public officials; in such instances, the action in contract is inadequate and mandate is the appropriate remedy. (See Tevis v. City & County of San Francisco (1954) 43 Cal.2d 190 (mandate to compel officials to approve payroll); Ross

v. Board of Education (1912) 18 Cal.App. 222 (mandate to compel officials to approve payment); cf. Flora Crane Service, Inc. v. Ross (1964) 61 Cal.2d 199 (mandate to compel controller to certify that funds have been appropriated).) The superior court in the present case concluded that since "enforcement of the rights of [plaintiffs] requires obtaining the official cooperation necessary to implement the application of the formula agreed upon in the Memorandum of Understanding. . . . [Plaintiffs] do not have a speedy or adequate remedy at law to prevent the deprivation of their rights other than by mandamus."[20/]

Although defendants do not challenge the court's conclusion that plaintiffs have no other adequate remedy, they nonetheless urge that the remedy of mandamus is not available. Defendants contend that the adoption of a salary ordinance constitutes a legislative act within the discretion of the city council,

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20/ Plaintiffs also sought declaratory relief, and undoubtedly established a controversy sufficient to justify that remedy. (See Walker v. County of Los Angeles (1961) 55 Cal.2d 626, 636-637; San Bernardino Fire & Police Protective League v. City of San Bernardino, supra, 199 Cal.App.2d 401, 417.) The fact, however, "that an action in declaratory relief lies . . . does not prevent the use of mandate." (Brock v. Superior Court (1952) 109 Cal.App.2d 594, 603.)

and that mandamus will not issue to compel action lying within the scope of agency or official discretion, or to compel performance of a legislative act.[21/]

Defendants' contention rests upon the mistaken impression that the trial court mandated the enactment of a new salary ordinance. The trial court's judgment, however, proceeded upon the theory that the council's approval of the memorandum of understanding in itself constituted the legislative act that fixed employee salaries in accord with that understanding. The writ, therefore, did not command the enactment of a new salary ordinance, but directed the non-legislative and ministerial acts of computing and paying the salaries as fixed by the memorandum and judgment.[22/]

21/ See 5 Witkin, California Procedure (2d ed. 1971) page 3851 and cases there cited.

22/ Part 1 of the trial court judgment provides "That a peremptory writ of mandate issues directing the respondents . . . to proceed at once to provide salary and wage increases . . . in accordance with the following standard: . . ." The judgment then sets out in detail the formula by which the wage increase for each step of each job classification must be computed. Part 2 of the judgment then provides that "When the foregoing computations have been made, respondents are further directed to proceed at once to pay the differential sum due each said employee for the period October 1, 1970 through June 30, 1971, together with interest as provided by law. . . ."

The use of mandamus in the present case thus falls within the established principle that mandamus may issue to compel the performance of a ministerial duty[23] or to correct an abuse of discretion.[24]

"The critical question in determining if an act required by law is ministerial in character is whether it involves the exercise of judgment and discretion." (Jenkins v. Knight (1956) 46 Cal.2d 220, 223-224.) In the present case, the city entered into an understanding which, we have held, became a valid and binding agreement upon approval by resolution of the council. That agreement, as interpreted by the

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23/ See People ex rel. Younger v. County of El Dorado (1971) 5 Cal.3d 480, 491; Jenkins v. Knight (1956) 46 Cal.2d 220; California Civil Writs (Cont.Ed. Bar 1970) sections 5.25-5.26.

24/ "While mandamus will not lie to control the discretion exercised by a public officer or board . . . it will lie to correct an abuse of discretion by such officer or board." (Baldwin-Lima-Hamilton Corp. v. Superior Court (1962) 208 Cal.App.2d 803, 823; see Walker v. County of Los Angeles, supra, 55 Cal.2d 626, 639; Cal. Civil Writs (Cont.Ed.Bar 1970) §§ 5.33-5.35; 5 Witkin, Cal. Procedure (2d ed. 1971) pp. 3853-3854.) Contrary to the claim of the concurring and dissenting opinion (see infra at pp. , ,* appellate courts in this state have on numerous occasions mandated legislative bodies to enact salary ordinances. (See, e.g., Sanders v. City of Los Angeles (1970) 3 Cal.3d 252, 262; Walker v. County of Los Angeles (1961) 55 Cal.2d 626, 639; Sanders v. City of Los Angeles (1967) 252 Cal.App.2d 488; accord Griffin v. Board of Supervisors (1963) 60 Cal.2d 318 (mandate directing board of supervisors to reapportion county).)

*Concurring and dissenting opinion, pages 2-3.

trial court, is definitive, and admits of no discretion.

The findings and judgment establish precise mathematical standards which, applied to the survey data, yield the exact sums due. The trial court, in fact, awarded plaintiffs prejudgment interest on the ground that the action was one "to enforce an underlying monetary obligation the amount of which was certain or could have been made certain by calculation." (Emphasis added.) Unquestionably the negotiation and approval of the understanding involved the exercise of discretion by city officials. (San Joaquin County Employees' Assn., Inc. v. County of San Joaquin, supra, 39 Cal.App.3d 83, 87-88.) But in approving the understanding, the city exhausted that discretion; the duty of its officials to carry out its obligations is of ministerial character.

7. The cause must be remanded for joinder of the city officers charged with the duty of computing and paying wages and salaries of city employees.

As we have noted, the trial court mandated performance of the ministerial acts of computing and paying the salaries as fixed by the judgment. The court's writ, however, was directed only to the city and its councilmen; plaintiffs failed to join as addi-

tional defendants the city officials entrusted with the administrative duties of computing and paying salaries. The trial court judgment and mandate thus suffer from a procedural defect similar to that discussed by the Court of Appeal in Martin v. County of Contra Costa (1970) 8 Cal.App.3d 856.

In Martin, plaintiffs sued the county and its board of supervisors to mandate payment of uniform allowances. The trial court rendered judgment only against those named defendants, and not against the county officers responsible for payment of the allowances. In remanding the cause for further proceedings, the Court of Appeal stated that "The only defect in proceedings and judgment is the failure to join the proper ministerial officers of the county government. Plaintiffs should be permitted to join the proper parties. . . . Since the county is the real party in interest and has been represented throughout, those ministerial officers should not be permitted to assert any laches or limitations upon being joined, but should be bound by the findings made against the county and its board of supervisors which have been approved in this opinion." (8 Cal.App.3d at p. 866.)

Following the reasoning of the Court of Ap-

peal, we hold that the present judgment in favor of plaintiffs must be reversed and remanded to permit joinder of the appropriate city officials. These ministerial officers should not be permitted to assert any defense of laches or limitations, and will be bound by the findings of the trial court made against the city.

8. Plaintiffs' cross-appeal is not meritorious.

The City of Glendale has traditionally determined employee salaries by establishing a five-step salary range for each job classification. The trial court directed that whenever Glendale's salary for the fifth step of a salary range was less than the average salary from the surveyed jurisdictions, the city must raise the fifth step salary to an amount equal to that average plus one cent; it further directed that salaries for steps one through four be raised proportionately to the fifth step salary.

Plaintiffs argue on their cross-appeal that the trial court, instead of directing payment of fifth step salaries equal to the survey average plus one cent, should have ordered the city to provide salary increases to the closest fifth step of a higher range above the average. We believe, however, that the court did exactly that which plaintiffs now request; in fix-

ing step five salaries at the average plus one cent, and increasing step one through four salaries proportionately, the court in effect established a new salary range at a level sufficient to assure plaintiffs a salary above the average from the surveyed jurisdiction. Although plaintiffs would prefer a raise to a salary range which exceeded that average by more than the one cent differential established by the trial court, they point to nothing in the memorandum of understanding or the evidence which bars the creation of new salary ranges so long as they yield an above-average wage.

9. Conclusion

For the foregoing reasons, the judgment is reversed, and the cause remanded for further proceedings in accord with the views expressed in this opinion. Each side shall bear its own costs on appeal.

TOBRINER, J.

WE CONCUR:

WRIGHT, C.J.
McCOMB, J.
SULLIVAN, J.
CLARK, J.
RICHARDSON, J.

C O P Y

GLENDALE CITY EMPLOYEES' ASSN. v. CITY OF GLENDALE

L.A. 30357

CONCURRING AND DISSENTING OPINION BY MOSK, J.

I concur in the reversal of the judgment, but I dissent from the directions given upon remand.

The majority make out a persuasive case for finding that a memorandum of understanding regarding municipal employee salaries was reached and that the city should in good conscience honor its agreement. From that moral reading, however, the majority leap to a legal conclusion which results in judicial invasion of the legislative process, and the matter is returned to the trial court for issuance of an order which cannot, or should not, be enforced.

The posture in which this case comes to us is of significance. First of all, the plaintiffs sued no ministerial officers; they sued the City of Glendale and five individuals identified as "the duly elected councilmen," members of the "governing body" of the City of Glendale. No other persons, particularly none with ministerial as distinguished from legislative duties, appeared in the action at any time.

Secondly, the trial court issued a writ of mandate "directing the respondents and each of them [i.e., the city

and the duly elected councilmen] to proceed at once to provide salary and wage increases to petitioners . . . ."

And finally, in their petition for hearing the petitioners seek mandate to enforce a memorandum "executed by the City of Glendale," not mere performance of a duty by an identified ministerial public servant.

I

The majority have cited no authoritative cases in which a city and its legislative body have been mandated to adopt an ordinance, relating to salaries or to any other subject. The reason there are no such appellate cases is elementary: adoption or rejection of an ordinance has always been recognized as an act of legislative discretion and courts may not interfere with that legislative function. Each councilman has his electorally bestowed right to vote "aye" or "nay" on any proposal pending before the body. Perhaps, as here, the city and its governing legislators should have honored an obligation, but they cannot be compelled to do so by mandate of a court.

Let us review the cases cited by the majority to purportedly support their conclusion that a city and its councilmen may be ordered to enact a specified ordinance. In Tevis v. City and County of San Francisco (1954) 43 Cal.2d 190, 194, members of a commission, the secretary of the civil service commission and the controller "were directed to certify and

approve payrolls." This was clearly a ministerial act, but, the court continued at page 200, city officials "may not be compelled to authorize the payment of compensation or issue a warrant when funds are lacking [i.e., unappropriated]." This court expressed the hope the city would make funds available, but there was no order for it to do so. Ross v. Board of Education (1912) 18 Cal.App. 222, involved an order directing members of a board to pay $100 due on an employment contract.

Flora Crane Service, Inc. v. Ross (1964) 61 Cal.2d 199, concerned mandate against the city controller because he had failed to perform what the court found to be a ministerial duty (id. at p. 204). To the same effect is San Francisco v. Boyd (1941) 17 Cal.2d 606: involving an employment contract, the mandate suit was not directed to the city or its legislative body, but against the controller, a ministerial officer. Similarly in Ackerman v. Moody (1918) 38 Cal.App. 461, the city auditor, not the City of San Diego or its council, was ordered by mandate to certify a recall election.

The majority, in footnote 24, desperately attempt to find some authority for courts to mandate legislative bodies. They miss the target. Sanders v. City of Los Angeles (1970) 3 Cal.3d 252, and Sanders v. City of Los Angeles (1967) 252 Cal.App.2d 488, arose out of the same circumstances. The courts found that a ministerial officer had failed to perform

his charter-required function. "As the adviser of the committees and the council and as the responsible official of the city, the City Administrative Officer failed utterly to perform his duties." (Id. at p. 493 of 252 Cal.App.2d.) He, and several administrative departments--recreation and parks, library, retirement system, pensions--were then directed to perform their ministerial duties.

In Walker v. County of Los Angeles (1961) 55 Cal.2d 626, 632, the court declared that the Board of Supervisors failed to perform its duty, but found only that the board has "a quasi-judicial, non-legislative, fact-finding function preceding the performance of the indicated legislative act." (Italics added.) It was that nonlegislative function the board was mandated to perform.

It is true that we ordered the Board of Supervisors to redistrict supervisorial districts in Griffin v. Board of Supervisors (1963) 60 Cal.2d 318. I point out, however, that this court obviously has had second thoughts about the propriety of such an order, for it was not repeated in subsequent reapportionment cases. We never again mandated a legislative body to pass a reapportionment act; we indicated that if it did not do so by a specified time, the court would undertake the task. And we did. (Silver v. Brown (1965) 63 Cal.2d 270, 281; Legislature v. Reinecke (1972) 6 Cal.3d 595, 603; Legislature v. Reinecke (1972) 7 Cal.3d 92, 93; Legislature v. Reinecke (1973) 10 Cal.3d 396.)

Thus it is abundantly clear that appellate courts do not order a political subdivision as an entity, or its legislative body, to act or to refrain from acting in any specified manner.

Tandy v. City of Oakland (1962) 208 Cal.App.2d 609, is a case in point. Plaintiffs sought to mandate the city council to rezone their property on a theory that the current zoning ordinances were unconstitutional as applied. The court held that such ordinances "are entirely within the discretion of the municipal legislative body" and that "a court cannot substitute its judgment for that of the municipality" (id. at p. 612). To the identical effect is Johanson v. City Council (1963) 222 Cal.App.2d 68, 72.

II

The majority seem to assume that a mere ministerial act, performed by unidentified "appropriate city officials" (ante, p. ____*), will provide the petitioners with the remedy they seek. The assumption is unjustified.

As alleged in the complaint and as found by the trial judge, on September 29, 1970, the city council adopted salary ordinance No. 3021, which, said the trial court, "did not provide increases in salaries and wages" based upon the purported formula. The adoption of that ordinance was clearly

*Multilith opinion, page 31.

a legislative act, as, indeed, is the passage or rejection of any ordinance. If there are to be any other or different salary provisions, ordinance No. 3921 must be repealed by the city council and another ordinance adopted in its stead. Such action will also be strictly legislative in character.

That brings us back to square one: there is no authority for this court, or any court, to direct how the city councilmen, individually or collectively, are to vote on any measure proposed to repeal ordinance No. 3921. Pursuant to a bargained understanding, the councilmen may be under a moral obligation to adopt a new salary ordinance. However, the question before us is not the existence of a prior commitment, but whether a court may compel a legislative result.

The procedure employed by the Court of Appeal in Martin v. County of Contra Costa (1970) 8 Cal.App.3d 856, and adopted by the majority here, is untenable. The court there conceded "the general principle that the courts have no power to compel the performance of a legislative act" and that the petitioners asked for mandate to compel the city "to enact an ordinance which compensates and provides benefits for petitioners" (id. at p. 865). It then proceeded to direct [illegible] of ministerial officers. Now, it must be asked,

can the ministerial officers secure enactment of a county ordinance as prayed? The Martin court gives us no clue, nor do the majority advise us here how the unidentified ministerial officers, at this late date to be amended into the case, are to undertake the legislative task of repealing ordinance No. 3921 and adopting another measure in its place.

III

Finally, I am compelled to make an embarrassing inquiry. How do my learned colleagues propose to enforce their order?

Naturally it is to be hoped that all good citizens will accept a final judicial determination of their rights and duties. But let us assume arguendo that the Glendale City Councilmen are intransigent, that they steadfastly refuse to vote to repeal ordinance No. 3921 and to adopt another salary ordinance in its stead. Are my colleagues prepared to cite the entire legislative body for contempt of their order? (See, e.g., City of Vernon v. Superior Court (1952) 38 Cal.2d 509, 519-520.) I would hope not. Yet the potential need to do so demonstrates one of the pitfalls when the judiciary attempts in any manner to dictate how the legislative process is to function.

In the final analysis, this is not a labor or salary case nor is it litigation over a contract. This is

purely and simply an issue of separation of powers. I, for one, am unwilling to embark upon a murky project of ordering legislative members to adopt an ordinance, no matter how desirable I may believe the ordinance to be.

MOSK, J.